United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED MAY 9 1958

Joseph W. Stewart
CLERK

No. 14,412

LAWRENCE S. OSBORNE,

Appellant,

v.

70

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

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172 [Filed Oct. 15, 1956]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled August 30, 1956, Sworn in on September 4, 1956

The United States of Ameria	)	Criminal No. 1075 - '56
	)	Grand Jury No. 1292-56
v.	)	Vio. 26 U.S.C. 4704a
Lawrence S. Osborne	)	21 U.S.C. 174
		18 U.S.C. 111
		22 D.C.C. 505(a)

The Grand Jury charges:

On or about September 10, 1956, within the District of Columbia, Lawrence S. Osborne purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, six capsules containing a mixture totaling about 6.2 grains of heroin hydrochloride, quinine hydrochloride and mannitol.

SECOND COUNT:

On or about September 10, 1956, within the District of Columbia, Lawrence S. Osborne facilitated the concealment and sale of a narcotic drug, that is, six capsules containing a mixture totaling about 6.2 grains of heroin hydrochloride, quinine hydrochloride and mannitol, after the said heroin hydrochloride had been imported, with the knowledge of Lawrence S. Osborne, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the first count of this indictment.

THIRD COUNT:

On or about September 10, 1956, within the District of Columbia, Lawrence S. Osborne forcibly assaulted, resisted, opposed, impeded, intimidated and interfered with Fred E. Wilson, an officer and employee of the Bureau of Narcotics, that is, a Narcotic Agent, while said Fred E. Wilson was engaged in the performance of his official duties.

173 173 FOURTH COUNT:

On or about September 10, 1956, within the District of Columbia, Lawrence S. Osborne, without justifiable and excusable cause, did assault, resist and oppose Felix R. Aiken, a member of the Metropolitan Police Department operating in the District of Columbia, while said Felix R. Aiken was engaged in the performance of his official duties.

/s/ Oliver Gasch
Attorney of the United States in and
for the District of Columbia

A TRUE BILL:
/s/ Paul Matthews
Foreman.

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174 [Filed Oct. 19, 1956]

PLEA OF DEFENDANT

On this 19th day of October, 1956, the defendant Lawrence S. Osborne, appearing in proper person and by his attorney John J. Dwyer, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

By direction of
JOSEPH C. MCGARRAGHY
Presiding Judge
Criminal Court # Three

HARRY M. HULL, Clerk
By /s/ Richard A. Kane
Deputy Clerk

Present:
United States Attorney
By Harold Titus
Assistant United States Attorney
D. Harrison
Official Reporter

175 [Filed Jan. 29, 1957]

* * * * * *

MOTION TO SUPPRESS EVIDENCE

Comes now Lawrence S. Osborne in proper person. At present, Petitioner is restrained of his lawful liberty at the District Jail. Located at 200-19th Street, Southeast, Washington, D. C. The cause of such imprisonment and restraint, according to petitioners best knowledge and belief is by virtue, and indictment issued out of the United States District Court for the District of Columbia, Washington, D. C. In criminal case No. 1075-56. Said Petitioner states that restrain is unconstitutional. And is requesting legal enlargement and the illegalities in criminal case No. 1075-56 consist of the following

176 To wit:

1. That the officers didn't make themselves known to petitioner or showed a warrant at anytime.

2. The officers had no probable cause to arrest, petitioner who was disturbing the peace or doing anything that was illegal, when jumped from behind by arresting officers.

3. That the officers assaulted me for about five or ten minutes, tearing my clothes, then carried me to headquarters.

4. That the petitioner never possess any narcotics at any time.

5. The arrest is a clear violation of my right's guaranteed by the IV amendment.

/s/ Lawrence S. Osborne

(JURAT)

---

177 [Filed Feb. 20, 1957]

* * * * * *

On this 20th day of February, 1957, came the attorney of the United States; the defendant in proper person and by his attorney, Barrington D. Parker, Esquire; whereupon the motion of the defendant for the suppression of evidence, coming on to be heard, after argument by counsel

is by the Court denied.

The defendant is remanded to the District of Columbia Jail.

By direction of

RICHMOND B. KEECH
Presiding Judge
Criminal Court #1
HARRY M. HULL, Clerk
By /s/ Daniel J. Mencoboni
Deputy Clerk

Present:
United States Attorney
By Arthur McLaughlin
Assistant United States Attorney
Thomas O'Neal
Official Reporter

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178 [Filed Feb. 28, 1957]

* * * * * *

On this 28th day of February, 1957, came again the parties aforesaid, in manner as aforesaid, the same jury as aforesaid in this cause, whereupon, the jury returns into Court at 10 a.m. and returns its sealed verdict; thereupon, the jury upon their oath say that the defendant is guilty as charged.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

Bolitha J. Laws
Presiding Judge
Criminal Court # Four
HARRY M. HULL, CLERK
By /s/ Paul A. Roser
Deputy Clerk

Present:
United States Attorney
By Arthur McLaughlin
Assistant United States Attorney
J. Rawls
Official Reporter

179 * * * * * *

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180 [Filed May 7, 1957]

Judgment and Commitment

* * * * * *

On this 3rd day of May, 1957 came the attorney for the government and the defendant appeared in person and by counsel, Barrington D. Parker, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of

Violation of Section 4704a, Title 26; Section 174, Title 21; Section 111, Title 18 of the United States Code, and Violation of Section 505a, Title 22, District of Columbia Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Twenty (20) months to Five (5) years on Count One; Ten (10) years on Count Two; One (1) year to Three (3) years on Count Three; One (1) year to Three (3) years on Count Four; said sentence by the counts of the indictment to run concurrently and to run concurrently with the sentence imposed in Criminal Case No. 766-52.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Bolitha J. Laws
United States District Judge.

* * * * * *

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181 [Filed May 13, 1957]

* * * * * *

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO PROCEED WITHOUT PREPAYMENT OF COSTS

I, Lawrence Osborne, being first duly sworn according to law, depose and say that I am the in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.
2. That because of my poverty I am unable to pay the costs of said suit or action.
3. That I am unable to give security for the same.
4. That I believe I am entitled to the redress I seek in said suit or action.
5. That the nature of my cause of action is briefly stated as follows:

/s/ Lawrence Osborne

(JURAT)

Let the applicant proceed on appeal without prepayment of costs.

_____

JUDGE

182 [Filed May 21, 1957]

* * * * * *

ORDER

Upon consideration of defendant's application for leave to proceed on appeal without prepayment of costs and affidavit in support thereof, it appearing to the Court that said application is frivolous, without merit,

and not in good faith, it is this 21st day of May, 1957,

ORDERED that said application for leave to proceed on appeal without prepayment of costs be and hereby is denied.

/s/ Bolitha J. Laws
Chief Judge

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183 [Filed July 8, 1957]

* * * * * *

PETITION FOR REDUCTION OR MODIFICATION OF SENTENCE

Now comes the petitioner herein, and respectfully petitions this Honorable Court to reduce or modify the sentence herein imposed, and for grounds of the said petition says as follows:

1. The sentence of ten years imposed in this case is excessive, harsh, oppressive, and not warranted by the facts and circumstances of this case.

2. The evidence presented at the trial of this defendant indicated that he had suffered at the hands of the police officers and that he had been arrested without a warrant and that the arresting officers had a warrant for another individual whom they had in their grasp at the time that the defendant was arrested.

3. There is no evidence, presently, or presented at the time of the trial which indicated that the defendant was a user of narcotics or a dealer or pusher of narcotic drugs in any way or manner whatsoever.

4. The defendant has a family, and if his sentence were reduced then he could return to his family and to a useful place in society at a much sooner time.

Respectfully submitted,
/s/ LAWRENCE OSBORNE

---

184 [Filed July 11, 1957]

July 8, 1957

Chief Judge Laws

Motion filed in proper person

Defendant: Lawrence Osborne

Case No. 1075-56

Motion: Petition of deft. for reduction or modification of sentence.

PLEASE RETURN TO THE CRIMINAL CLERK'S OFFICE. THANK YOU.

July 10, 1957

Motion denied

/s/ Bolitha J. Laws

Chief Judge

---

185 [Filed March 18, 1958]

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. Misc. 868 JANUARY Term, 1958

Lawrence Osborne,

Petitioner,

v.

United States of America,

Respondent

District Court Criminal
No. 1075-56.

Before: Bazelon, Fahy and Washington,
Circuit Judges, in Chambers.

ORDER

Upon consideration of the petition for leave to prosecute an appeal in forma pauperis, of respondent's opposition, of petitioner's reply, of the memoranda in support filed by petitioner's counsel and respondent's memorandum in opposition, it is

ORDERED by the Court that petitioner be, and he is hereby, allowed to proceed on appeal without prepayment of costs from the judgment

of the District Court entered herein May 3, 1957, without prejudice to the presentation by the Government in its brief and at oral argument of any questions concerning the jurisdiction of this Court to entertain the appeal in view of petitioner's delay in filing his petition in this Court.

It is FURTHER ORDERED that Harry A. Poth, Jr., Esquire, a member of the Bar of this Court be, and he is hereby, appointed to represent petitioner on his appeal.

It is FURTHER ORDERED that the transcript of record in this case be prepared promptly by the Clerk of the District Court and be transmitted to this Court by him within forty days.

It is FURTHER ORDERED that the joint appendix in this case be printed at the expense of the United States.

Per Curiam.

Dated: March 13, 1958

A true copy,

Test: JOSEPH W. STEWART,
Clerk, United States Court of
Appeals for the District of
Columbia Circuit

By: /s/ William G. Secrest, Deputy Clerk

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CRIMINAL DOCKET

UNITED STATES COURT FOR THE DISTRICT OF COLUMBIA

CASE CLOSED

PARTIES	ATTORNEYS	G. J.	CRIMINAL NO.
United States vs.	U. S. Attorney	No.	1075-56
LAWRENCE S. OSBORNE	McLaughlin	1292-56	
	John J. Dwyer		
	Barrington D. Parker		
	H. A. Poth, Jr. -Appeal		

CHARGE:
VIO. T. 26, USC 4704a

VIO. T. 21, USC 174,
VIO. T. 18, USC 111,
VIO. T. 22, DCC 505(a)

DATE	PROCEEDINGS
1956 Oct 15	Presentment and indictment filed (4 counts)
Oct 15	Copy of indictment given to defendant. Cert. filed.
1956 Oct 19	ARRAIGNED, Plea NOT GUILTY entered; Deft. REMANDED to the District of Columbia Jail; Appearance of John J. Dwyer entered and filed; Attorney John J. Dwyer present. McGARRAGHY, J. (Reporter-Harrison) Cert. filed.
1956 Nov 13	Affidavit in support of application for leave to proceed without prepayment of costs, FILED and GRANTED (Fiat) HOLTZOFF, J.
1957 Jan 29	APPEARANCE of John J. Dwyer as attorney for defendant entered WITHDRAWN, per praecipe, filed. (Fiat) LAWS, C. J. Referred for appointment of counsel. LAWS, C.J. (Reporter-J. Rawls)
1957 Jan 29	MOTION OF DEFENDANT to suppress evidence, filed. (Prepared by Deft.)
1957 Jan 29	ORDER APPOINTING Barrington D Parker as counsel to defend, filed. LAWS, C. J. (N)
1957 Feb 20	MOTION of DEFENDANT for the suppression of evidence heard, argued and DENIED. Deft. REMANDED to the District of Columbia Jail; Attorney Barrington D. Parker present. (CONTINUED) KEECH, J. (Reporter-O'Neal) Cert. filed.
189 *	* * * *
1957 Feb 26	In Re: Defense Witnesses: Martha Mitchell, Barbara Knight, and Evelyn Butler, Attachments for contempt issued.

1957 Feb 26 In Re: Defense Witnesses: Martha Mitchell, Attachment for contempt returned executed by arresting witness; Witness having purged herself, attachment withdrawn per order of Court.

LAWS, C. J. (Reporter-J. Rawls)

1957 Feb 26 JURORS FROM CRIMINAL COURTS NOS. 1, 3, 4 SWORN ON VOIR DIRE; JURY SWORN:

Francis X. Wilson	Clementine T. Singletary
Elizabeth G. Werres	Elizabeth M. McCoy
Libby Dunn	Leslie L. Carico
Mary T. Thomas	Marian M. Fountain
Mary H. Pence	Sylvia Otlin
Alma M. Zeigler	Sara C. Boyd

Alternate Juror Sworn:

a.1. Mary J. Carduff

Case is RESPITED until 10:00 a. m. to-morrow;

Deft. REMANDED to the District of Columbia Jail;

Attorney Barrington D. Parker present.

LAWS, C. J. (Reporter-J. Rawls) Cert. filed.

1957 Feb 27 TRIAL RESUMED; same jury;

Alternate juror discharged;

The Court directs the taking of a Sealed Verdict;

Jury returns its sealed verdict at 9:00 p. m. and is excused to return into Court at 10:00 a. m. to-morrow to deliver its verdict to the Court;

Defendant REMANDED To the District of Columbia Jail;

Court orders food for jury;

Court orders transportation for jury;

Attorney Barrington D. Parker present.

LAWS, C. J. (Reporter-Rawls) Cert. filed.

1957 Feb 28 JURY RETURNS into COURT at 10:00 a. m. and DELIVERS its SEALED VERDICT:

VERDICT: GUILTY as charged;

Case is REFERRED to the Probation Officer of the Court;

Deft. REMANDED to the District of Columbia Jail;

Verdict of jury, filed;

Attorney Barrington D. Parker present.

LAWS, C.J. (Reporter-J.Rawls) Cert.filed.

(CONTINUED)

190 * * * * *

1957 May 3 SENTENCED to imprisonment for a period of

TWENTY (20) MONTHS to FIVE (5) YEARS on COUNT 1;

TEN (10) YEARS on COUNT 2;

ONE (1) YEAR TO THREE (3) YEARS on COUNT 3;

ONE (1) YEAR to THREE (3) YEARS on COUNT 4;

said sentence by the counts to run CONCURRENTLY and to run CONCURRENTLY with sentence imposed in Criminal Case No. 766-52. Deft. REMANDED to the District of Columbia Jail; Attorney B. D. Parker present.

LAWS, C. J. (Reporter-O'Neal)

1957 May 7 Judgment & Commitment of 5/3/57, filed. LAWS, C. J.

1957 May 13 AFFIDAVIT in support of application for leave to proceed on Appeal from Judgment without prepayment of costs, filed. (Prepared by Deft.)

1957 May 21 ORDER DENYING application of Deft. for leave to appeal from Judgment without prepayment of costs, filed.

LAWS, C. J. (N)

1957 Jun 3 In Re: Evelyn Butler, Defense Witness:

Attachment for Contempt returned unexecuted.

In Re: Barbara Knight, Defense Witness:

Attachment for Contempt returned unexecuted.

LAWS, C. J. (Reporter-O'Neal)

1957 Jul 3 PETITION of DEFENDANT for reduction or modification of sentence, filed.
(Prepared by Deft.)

1957 Jul 11 PETITION of DEFENDANT for reduction or modification of sentence, DENIED, 7-10-57, filed. LAWS, C.J. (N)

1958 Jan 10 TRANSCRIPT OF PROCEEDINGS, Vol. 1, 2, Jan. 29, 1957 and Feb. 26, 1957, Pages 1-56, and Vol. 3 & 4, Feb. 27 & 28, 1957, Pages 57-171, filed.
Clerk's Copy (Reporter-Rawls)

1958 Feb 11 TRANSCRIPT OF PROCEEDINGS, Sentence, May 3, 1957, Pages 1-5, filed.
File Copy (Reporter-O'Neal)

1958 Mar 18 Certified copy of ORDER from U. S. Court of Appeals allowing the Deft. to proceed on Appeal without prepayment of costs from the Judgment of the District Court entered 5-3-57 without prejudice to the presentation by the Government in its brief and at oral argument of any questions concerning the jurisdiction of this Court to entertain the appeal in view of petitioner's delay in filing his petition in this Court, and
FURTHER ORDERED that Harry A. Poth, Jr., Esq. be appointed

(CONTINUED)

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1958 Mar 18 to represent Deft. on appeal;
FURTHER ORDERED that the transcript of record in this case be prepared promptly by the Clerk of the District Court and be transmitted within forty (40) days, and
FURTHER ORDERED that the joint appendix in this case be printed at the expense of the United States, filed. Dated 3-13-58.

1958 Mar 21 DESIGNATION OF RECORD, filed. Cert. of Serv.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

* * * * * *

February 26, 1957

The above-entitled matter came on for trial before the HONORABLE BOLITHA J. LAWS, Chief Judge, United States District Court, and a jury, at 2 o'clock p. m.

APPEARANCES:

On behalf of the Government:

ARTHUR J. McLAUGHLIN,

Assistant United States Attorney.

On behalf of the defendant:

BARRINGTON D. PARKER, ESQ.

* * * * * *

BRODERICK FELIX R. AIKEN

was called as a witness for and in behalf of the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. Officer, talk real loud and tell us what your name is, please.

A. Broderick Felix R. Aiken.

* * * * * *

Q. On september 10, 1956, were you a member of the Metropolitan Police Department? A. Yes, sir; I was.

Q. What squad were you assigned to at the Metropolitan Police Department on September 10, 1956? A. The Narcotics Squad.

Q. On September 10, 1956, what hours were you working as a member of the Metropolitan Police Department? A. At that time I was working the day shift; that is, from 8:00 till 4:00.

* * * * * *

Q. On that particular day, September 10, 1956, did you have an occasion to go to Delaware Avenue, Southwest, in Washington, D. C. ?

A. Yes, sir; I did.

Q. What time would you say that you arrived in that immediate

vicinity? A. I arrived in that immediate vicinity about 3:00 p.m.

Q. Was there anyone with you at the time that you arrived in that immediate vicinity on September 10, 1956? A. Yes, sir.

Q. Who was with you? A. Agent Wilson of the Federal Bureau of Narcotics and Precinct Detective Alton Thomas of the Metropolitan Police Department.

Q What was the occasion for you to go to that immediate vicinity? A. I had an arrest warrant for that individual.

Q. What was that? A. For Leroy. He was known to me as "Leroy". It was a John Doe warrant.

Q. On what charge was that arrest warrant? A. Harrison Narcotics Act.

Q. How did you get to that immediate vicinity of Delaware Avenue, Southwest, in Washington, D.C.? A. I rode with Agent Wilson in his car, a Federal Bureau of Narcotics car, and Detective Alton Thomas rode with another member of the Federal Bureau of Narcotics in a different car.

Q. When you arrived in that immediate vicinity of Delaware
13 Avenue, Southwest, did there come a time when you did see this man Leroy? A. Yes, I did.

Q. Tell us under what circumstances you saw this man Leroy that you had a warrant for? A. We had information that he would be there between 4:00 and 6:00, and shortly after 6:00 o'clock, about 6:05 or 6:07, something like that, we observed him come to the 400 block of Delaware Avenue, Southwest.

At that time we had been there for almost an hour and a half, or so; and, during that time, I observed the defendant come up to that area, along with several other addicts known to me, and some other addicts not known to me, and they waited there until Leroy came, and when Leroy went into the alley the defendant, along with the other addicts, went into the alley behind Leroy.

We circled the block and came in from the east side. We drove west into the alley.

Q. When you came into the alley, where was this group of men, including the defendant and Leroy? A. They were clustered near the corner and there seemed to be passes of money. All of them were around Leroy.

MR. PARKER: I object to that, Your Honor, what seemed to be passes.

BY MR. McLAUGHLIN:

14 Q. Just tell us what you saw. A. I saw passes between the people there in the alley.

Q. When you saw that, then what next happened? A. We stopped and everybody saw us and started running out of there. The defendant, he was near the corner and he backed into a door and agent Wilson got out on the left side, the side that he was on, the left side of the car, and started toward him, and I started toward another man.

Q. What man did you start toward? A. Toward Leroy.

Q. That was the man that you had the warrant for? A. That is correct, sir.

Q. When you say that Wilson approached the defendant and you started after this Leroy, then what next did you observe? A. I observed Agent Wilson appear to be --

Q. Tell us what you saw him do. A. I saw Agent Wilson say something to him which I didn't hear, and the defendant started to run and Agent Wilson grabbed his coat and the defendant turned around and struck Wilson.

At this time I released the man that I was about to apprehend, seeing that Agent Wilson needed assistance, and I went to the aid of Agent Wilson in his arrest and we had to struggle, and during the struggle the defendant spit from his mouth a gelatin bag containing six capsules.

15 Q. Were you struck? A. Yes. When I tried to pick up the capsules from the ground the defendant hit me on the back of my neck and knocked me to the ground.

I picked up the capsules and assisted Agent Wilson in subduing the defendant.

Q. Was the defendant then brought to police headquarters?
A. Yes, sir. We tried to get him in the car at one time and he agreed to go with us, and then after we got to the car the defendant swung around again and struck Agent Wilson and myself and we had to use force to get him in the car.

Q. You say you had to use force. What force did you use? A. I used my hand and Agent Wilson used his hand. I didn't have a blackjack at that time.

Q. How did you use your hand? A. We threw him to the ground the first time and he said, after we held him to the ground, he said he would go and we released him and I had one arm and Agent Wilson had the other and we were taking him to the car --

MR. PARKER: I submit, Your Honor, that answer is not responsive. The question is, How did he use his hand?

THE COURT: That is permissible. You may proceed.

16 THE WITNESS: He swung around, and at that time I swung. I hit the defendant with my hand and grabbed him back, put his hands in back of him like that (indicating), and Agent Wilson held the other hand and we struggled around. I don't know exactly, I can't give you a blow-by-blow description, but we finally got him in the car.

BY MR. McLAUGHLIN:

Q. I show you Government exhibit marked for identification No. 1, Officer, and ask you if you can identify that. A. Yes, sir; I can identify this.

Q. You identify Government Exhibit marked for identification No. 1 as what? A. This is the six capsules in this piece of paper, the very same piece of paper that the defendant spit from his mouth, and I initialed it. I can identify it by my initials on here, at the time, the time and the date, and my initials.

Q. What did the six capsules contain at the time you recovered them? A. Each capsule contained a white powder.

* * * * * *

17 Q. Then what did you do with that in reference to Government

Exhibit 1-A? A. I sealed it and placed it in the office safe until the 12th of September. Then I took it to the United States Chemist.

* * * * * *

Q. What chemist did you deliver Government 1-A containing Government Exhibit 1 for identification to? A. Dr. James L. Young.

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Q. All that you have testified to happening on September 10, 1956, was that within the District of Columbia? A. Yes, that is correct, sir.

* * * * * *

CROSS EXAMINATION

BY MR. PARKER:

Q. Officer, you say your trick of duty was from 8:00 to 4:00? A. That is correct.

Q. And you got in the vicinity of Delaware and M Street about 3:00? A. We got down there about 3:00 o'clock, 2:30 or 3:00 o'clock.

Q. In whose car were you at that time? A. I went down in Agent Wilson's car. It is not his car but it is a Federal Bureau of Narcotics Squad car.

Q. Where was Officer Thomas at that time? A. Officer Thomas was with another agent. They were stationed at one end of the alley and we were at the other.

Q. Which end of what? A. Delaware Avenue.

Q. Which end were you stationed at? A. We were in the Dy-Dee Wash right across the street. There are windows there and the man allowed us to make these observations.

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Q. Delaware and what? A. The 400 block of Delaware Avenue.

Q. What street runs east and west? A. I think Fourth Street runs into it, Fourth Street.

Q. Fourth Street runs into what street. A. Fourth Street runs into Delaware Avenue.

Q. Does Delaware Avenue run east and west? A. Delaware Avenue runs more or less north and south diagonally.

Q. So you are saying that this Dy-Dee Wash is at the intersection of Fourth and Delaware Avenue? A. No, sir. Dy-Dee Wash, the portion we were in, is directly on the 400-block of Delaware Avenue, right

across from the 400-block of Delaware on one side of the street. It is on the east side of the street.

Q. At that time you could see Officer Thomas, is that correct? A. No, sir.

Q. Where was he stationed? A. He was supposed to be down at the corner of Third--not Third -- he was about two blocks away. I am not familiar with the streets down there, but he was supposed to get a long ways from it and we were supposed to get close to it, and we would
20 contact them by car radio.

Q. You were in contact with him all the time you were there by car radio, weren't you? A. No, sir.

Q. Were you in contact with them at any time with car radio? A. We didn't contact them again until we got in the station.

Q. You didn't see them again until you got in the station, is that correct? A. That is correct.

Q. Who was the other officer with Officer Thomas? A. I don't recall his name.

Q A narcotics agent? A. That is correct, sir.

Q. You say that you first saw these people and they were some distance from the car in which you were stationed, is that correct? A. Not when I first saw them, no, sir.

Q. Where were you when you first saw them? A. I was in the Dy-Dee Wash across the street.

Q. Where were these people when you saw them? A. They were on the corner by a grocery store.

Q. What corner? A. It is an alley that runs through the middle of the 400-block of Delaware Avenue, and they were on Delaware Avenue
21 near this alley, the corner of the alley, the mouth of the alley in the 400-block of Delaware Avenue.

Q. How far is this alley from the corner? A. I believe the alley is just about in the middle of the block.

Q. From where you were sitting, how far would that alley be, out in the hall there (indicating)? A. From where I am sitting now?

Q. That is right. A. From where?

Q. From where you are sitting, can you point to some object in this room as far as the alley was from you? A. At the time I was in the Dy-Dee Wash?

Q. That is right. A. I would say it was further than any distance in this room here. I couldn't point out the distance.

Q. In other words, it would be out in the hall, wouldn't it? A. That is correct.

Q. And you started your surveillance around 3:00 o'clock in the afternoon, is that correct? A. That is correct.

Q. And you didn't make any arrests or did you go over into this area until 6:05 or 6:07, is that correct? A. That is correct, sir.

22 Q. And for that entire three-hour period, were you there in this Dy-Dee Wash, having these people under surveillance? A. We didn't have them under surveillance all this time. They started gathering about 4:00 o'clock. When we first got up there, there might have been a few people there, but there was one person known to me as an addict there at the time that I first came up there, but around 4 o'clock, all the others started coming there.

Q. Did you ever move from your station there in the Dy-Dee Wash? A. Yes, sir.

Q. Where did you go? A. I went to another window. There are several windows along there and I would go where I could get the best view.

Q. You were still in the same building, is that correct? A. That is correct.

Q. In other words, for three hours you were in the same building having these people under surveillance?

Q. I am not sure of the time.

Q. You said you were there about 3, and you went out to apprehend these people around 6:05 or 6:07. A. From the time I arrived there and left.

Q. That is what I am saying, three hours. A. Yes, sir, that is

23 about three hours.

Q. And you were in the Dy-Dee Wash peering through the various windows for three hours? A. Yes, sir.

Q. Was Officer Wilson in there with you at that time? A. That is correct.

Q. Where was your car? A. Our car was parked on the Dy-Dee Wash parking lot, on the same side of the street.

Q. All during this 3-hour period, Officer Wilson was inside the building, is that correct? A. He went out once to get some field glasses, as I recall, from his car.

Q. And that was only for that second or two? A. Well, for a short while.

Q. This fellow "Leroy" that you are talking about, you had seen him prior to September 10, hadn't you? A. Leroy?

Q. Yes. A. I don't recall whether I had seen him prior to that time or not.

Q. You got out the warrant for his arrest, didn't you? A. No, sir; I was executing the warrant for his arrest. I didn't actually swear to the warrant; no, sir.

Q. Did you have a description of Leroy? A. Yes, sir.

24 Q. What was his description? A. He was about 5 - 9, as I recall, 5 - 9 or 5 - 8, dark-skinned, mustache, about 29 to 32, and about 165 or 170 pounds, as I recall.

Q. When did you get that warrant? A. I don't recall when I got the warrant.

Q. Was it that day? A. I don't think it was that day. I am not sure.

Q. Do you recall testifying on direct examination that you knew who Leroy was and that you had this warrant to execute, to arrest him? A. I didn't testify to that; no, sir.

Q. You are positive of that? A. I didn't testify to what you said; no, sir.

Q. Your testimony is now that you had never seen Leroy prior to September 10? A. As I recall, what I told you was that I wasn't sure

whether I had seen Leroy prior to that day or not.

Q. I am asking you now. A. I have the same answer, sir.

Q. The only thing that you could go by was there was the description which was on the warrant? A. That and the fact that I had other information.

Q. Did Officer Wilson have any personal knowledge or information about Leroy that you know of? A. Other than what we had discussed there, he got the information from me mainly.

Q. He got the information from you? A. That is right.

Q. Where did you get your information from? A. We had an informer who went down and swore to the warrant for Leroy. We had been conducting an investigation for some time on Leroy.

Q. The alley that you were looking at was across Delaware Avenue, wasn't it? In other words, you were on one side of Delaware and the alley was on the other side? A. I was in the east side and the start of the alley is on the west side.

Q. Were you on the east side of Fourth Street or Delaware? A. East side of Delaware Avenue.

Q. And the alley you were looking at was on the west side of Delaware Avenue? A. That is correct, sir.

Q. And you were at the intersection of Fourth and -- A. I testified I was in the Dy-Dee Wash, which building starts at Fourth Street but it extends almost half way of the block there and it has windows all the way along the side.

Q. Do you know "Skipper"? A. No, sir. I heard of him, but I don't know him personally; no, sir.

Q. Do you know whether or not Officer Thomas knew Leroy prior to this day, had seen him personally? A. I don't know, sir.

Q. You say about 6:05 or 6:07 you left the Dy-Dee Wash and went into the alley? A. Not directly into the alley. There came a time when we went into the alley.

Q. You went out and got in the scout car, is that correct? A. No, sir.

Q. What did you do? A. We went out and got into the car of the Federal Bureau of Narcotics, which is an unmarked car. We drove east into the alley, and it seemed we came from First Street.

Q. You came from where? A. First Street Southwest from off the 400-block of First Street into the alley which runs perpendicular to the 400-block of Fourth Street and perpendicular to Delaware Avenue.

Q. How long did it take you to get there? Was that just a question of minutes or seconds? A. A short while. We saw him go in there.

27 Q. When you say "him," who do you refer to? A. Leroy.

Q. How do you know it was Leroy? A. From the description we had on the warrant and from other information. We had information that he would be there between a certain time and how he would be dressed.

Q. What was the information you had as to when he would be there? A. Well, the information he would be there sometime between 4 and 6; that he met people there during that time.

Q. What did Leroy have on when you saw him? A. He was dressed--

Q. I assume he was dressed. I want to know how he was dressed. A. He had on a coat and hat. That is about all I can remember as to how he was dressed. He had a hat, a gray hat with a black band around it. I remember that because they told me he would be wearing that.

Q. Who told you that? A. Buck Henderson.

Q. Buck Henderson? A. Yes, sir.

Q. He had on a gray hat with a black band. What else did he have on? A. I know he had on a coat. Other than that, I can't tell you.

28 Q. Was it a suit coat like I have on here (indicating)? A. I don't know whether it was a suit coat or a coat like he (indicating) has on.

Q. What color was it? A. I don't know.

Q. Didn't Buck Henderson tell you what kind of hat and what kind of coat he would have on? A He mentioned the hat. I remember him telling me about the hat, and I think he told me about the coat.

Q. Tell me what sort of a coat Buck Henderson told you Leroy would have on. A. I am not sure he even told me what kind of coat, other than the fact that he would have on a coat, and he described the hat,

and the hat would be turned up a certain way.

Q. When did you talk to Buck Henderson about this prior to September 10? A. I think I talked to him September 10, the morning of September 10.

Q. Where? A. I think it was on Fourth and Virginia Avenue, near the corner of Fourth and Virginia Avenue.

Q. That is in the same vicinity? A. No, sir; that is not in the same vicinity. That is a Southwest area but it is quite a distance from
29 the place where the offense occurred and where the informer told me this man would come to the alley at a certain time.

Q. How long had you known Buck Henderson prior to this morning? A. About three or four months.

Q. Was Officer Wilson with you at the time you talked with Buck Henderson that morning? A. No, sir.

Q. When did you first see Officer Wilson that day? A. I saw Officer Wilson sometime, I guess, around 2 or 2:30 in the office of the Narcotics Squad.

Q. I gather, then, that prior to this time you didn't know Leroy and you got the information from Buck Henderson as to what he was wearing, is that correct? A. We got the information from him as to what he was wearing, yes, sir.

Q. And that was the first time that you knew anything about Leroy, as a result of the conversation with Henderson? A. No, sir. No, sir. I had talked with other members of the Squad and they had other information on Leroy and they had been conducting an investigation. It wasn't the first time I heard of Leroy. I heard of him from several other sources.

Q. At the time you talked with Buck Henderson, was this warrant outstanding for Leroy? A. I don't recall whether it was outstanding that
30 day or the day before; sometime during that period the warrant was outstanding.

Q. When did you get the warrant for Leroy? A. The warrant was filed with the Commissioner. I never had it actually in my hand. I

knew there was a warrant on file and the description of the man I had with me at that time.

Q. Did you show the description of Leroy to Officer Thomas? A. I am sure he saw it, but I don't recall showing it to him.

Q. But you did show it to Officer Wilson? A. No, sir; I didn't show it to him either. I don't recall showing it to him but I know I told him something about it. I can't remember the exact time of what I told him.

Q. Did you leave this Dy-Dee Wash that you were in because you saw Leroy? A. Yes, sir.

Q. And what was Leroy doing at that particular time? A. Leroy was just walking. When he started walking, all these other addicts, known addicts, got right behind him and went in the alley and we assumed what was going on. We left and went on around.

Q. Tell us some of the known addicts that you saw going in at that
31 time. A. Algie Patterson was one of them.

Q. Who else? A. A fellow, Thomas Denkins -- they call him "Skin."

Q. All right. A. Walter Thomas Smith.

Q. Is it Walter or Thomas or both? A. Walter Thomas Smith. There was a Brown, they call him "Mechanic Slim", or something like that.

Q. Mechanic Slim Brown? A. His last name is Brown. I don't recall his first name; and Bernard Clark, and there were others unidentified.

Q. How long had these men here whom you have just named been under your surveillance? A. All of them came there, almost all of them except the one Brown came there during the time we were making these observations.

Q. What were they doing all of that time? A. Just standing on the corner waiting.

Q. And it was about 6 o'clock, then, that this other man came up whom you had never seen before and whom you felt was Leroy? A. Yes, sir; a man whom I believe to be Leroy who later turned out to be Leroy

came into the alley.

Q. And it was at that time that you left the Dy-Dee Wash and got
32 in your car, went to First Street, and came back through the alley in an easterly direction; is that correct? A. Would you ask me the same question again? I didn't understand it too well.

Q. It was at the time that you saw Leroy go into the alley that you left the Dy-Dee Wash, went to First Street, and came back to this alley in an easterly direction? A. Yes, sir. When I saw Leroy and the other people go into the alley. After I saw them all go into the alley, that is when we left and came in the alley from the opposite direction.

Q. How many blocks did you have to go when you left the Dy-Dee Wash and come to First Street? A. It was a matter of circling the block. We went to First Street, made a left turn, made another left turn, and came back down and made another left turn into the alley.

Q. And all during this time and even during the time you came down to the alley, you had not made contact with Officer Thomas, nor had you seen him; is that correct? A. That is correct.

Q. You didn't see Officer Thomas until you got back to Headquarters, is that correct? A. That is correct.

Q. And that is also true with the other man in the car with Officer Thomas, is that correct? A. That is correct.

33 Q. Now, that was on September 10, is that correct? A. Yes, sir.

Q. You had a clear vision across the street a distance, which you say is beyond this courtroom, around 6:05 or 6:07 in the evening, is that correct? A. I had a clear view of what?

Q. Of what was going on there? A. At what time?

Q. 6:05 or 6:07. A. At 6:05, I saw what was going on at 6:05, yes, sir. From where I was, I could see what was going on at 6:05.

Q. You had never seen this man "Leroy" before, and you could see him from where you were in this Dy-Dee Wash building to a distance outside of this courtroom at 6:05 in the evening, is that true? A. You said I had never seen Leroy before?

Q. That is true. A. I might have seen him before, but I never had

seen him to know as the particular man that I had the warrant for prior to this date.

Q. From where you were in that Dy-Dee Wash building, could you tell whether or not Leroy had a mustache? A. Had a mustache?

Q. Had a mustache on. You described him as having a mustache.

34 A Yes, sir.

Q. From where you were in that building, which is a distance greater than the length of this room, could you determine whether or not Leroy had a mustache on? A. Yes; I told you Agent Wilson went out and got a pair of field glasses and brought them into the building.

Q. And he could use glasses at 6:07 in the evening in September that distance? A. Yes, sir.

Q. Did you look through those field glasses? A. I looked through them several times.

Q. Did you get a good look at Leroy when you looked at him? A. Yes, sir.

Q. Tell me what kind of a coat he had on.

MR. McLAUGHLIN: Your Honor, we have been over this.

THE COURT: I think so.

MR. PARKER: If you wish to stipulate --

MR. McLAUGHLIN: No.

BY MR. PARKER:

Q. This alley you went down is known as Temple Court, is it not? A. Temple Court is the alley we finally ended up in. The alley we went down runs east and west. I don't know the name of that alley. Temple

35 Court is right in back of the 400-block of Delaware Avenue.

Q. Is Temple Alley the alley you saw Leroy go in? A. No; I saw him go in the mouth of the alley that goes east and west. When we came around, we saw him at the corner of this alley which runs east and west and Temple Court.

Q. Temple Court runs perpendicular to the alley that you saw Leroy go in, is that correct? A. Yes.

Q. You came around back from the other end of the alley which Leroy was going into, is that correct? A. That is correct. And from the other

end there is not-- You can see-- you have an angle you can look right on back into Temple Court from the end that I was looking from when I was at the Dy-Dee Wash. After they go into the alley, for any ways down the alley, you cannot see them from there. You would have to come around or go into the alley behind to see.

Q. In other words, you couldn't see what was going on in Temple Court from your position in the Dy-Dee Wash, but you could see from the alley you went around to? A. The rear of the alley to Temple Court, that is right.

Q. When you came around from the scout car, where was Leroy? A. We weren't in a scout car. We were in a car of the Narcotics Squad.

36 Q. Where was Leroy then? A. Leroy was standing there near the mouth of the alley in Temple Court with these addicts and the defendant standing around him.

Q. All right. That was the first time you had ever seen the defendant that day, is that correct? A. No, sir; I had seen the defendant when he came up there, and I had pointed him out to Agent Wilson when he came up.

Q. I asked you who these people were who were standing up there and you mentioned everybody but the defendant. You mentioned Patterson, Denkins, Brown and Clark. Why is it you didn't mention the defendant when I asked you to identify these people.

MR. McLAUGHLIN: I don't think that is a fair question, Mr. Parker.

MR. PARKER: I think it is.

THE COURT: I thought you asked him who the addicts were.

MR. McLAUGHLIN: That is right.

THE WITNESS: Yes.

BY MR. PARKER:

Q. So then you hadn't known this defendant as an addict, is that correct? A. That statement is not true, sir.

Q. Well, now, I asked you before, and Mr. McLaughlin very

37 carefully corrected me, who these other persons were whom you

identified as addicts, when I was pursuing those questions, and Mr. McLaughlin pointed out that these persons were addicts. So my question is: You didn't know this defendant as an addict; is that correct? A. I felt it would be prejudicial to refer to him as an addict, and that is why I didn't refer to him as an addict.

Q. We want the truth--

MR. McLAUGHLIN: No. I think the officer is correct.

THE COURT: He has made the explanation.

MR. McLAUGHLIN: I think the officer is being very fair.

THE COURT: The reason you didn't name him before as an addict was that you thought it would prejudice his case?

THE WITNESS: Yes, Your Honor.

MR. PARKER: I don't know whether that is a fair inference or not.

THE COURT: Whether it is fair or not, you can argue that to the jury.

BY MR. PARKER:

Q. Officer Aiken, when you got to the mouth of that alley going in an easterly direction, how far at that time was Leroy from you? A. Leroy was about the distance from where I am at an angle over to the other side of where the marshal is sitting.

38 Q. At that time, were you in the car or out of the car? A. I was in the car.

Q. And you continued; that is, the car continued to drive toward Leroy? A. Well, as soon as we drove, when we first drove into the alley he wasn't that distance from me. He was that distance from me when I got ready to get out of the car, but when I first got into the alley, he was directly in front of me about to the door, a little closer, I will say the second or third row.

Q. Did you ever call his name out after you got out of the car? A. No, sir; I don't recall calling his name out. I don't think I did.

Q. Who was driving the car at that time? A. Agent Wilson.

Q. After you got out of the car you proceeded towards Leroy, is that correct? A. Yes, sir.

Q. And then tell me what happened. A. Well, I started toward Leroy. He got out on the left side. I got out on the right. When they started running, Leroy started to my right and I started behind him. Agent Wilson got out on the left and started toward the defendant.

Q. Leroy started what direction up Temple Court? A. Leroy
39 was going out the mouth toward Delaware Avenue.

Q. In other words, he was retracing his steps? A. That is right.

Q. Where was the scout car at that particular time? And when I say "scout car," I mean the car which Agent Wilson was driving. A. The car was parked in the mouth of the alley there, near the mouth of the alley.

Q You hadn't gotten down to Temple Court? A. We had gotten out of the car when he started out there.

Q. Did you leave the car at Temple Court or was it up near the eastern end of the alley? A. It was right near to Temple Court, almost on the corner of Temple Court and this alley.

Q. All right. Where was this defendant at that particular time? A. The defendant -- what particular time?

Q. When you parked the car. A. The defendant was backing up. There were some torndown houses down there; that is, they were condemned, and he was back of one of the houses on Delaware Avenue. He was more or less blocked up in the doorway of this vacant house.

Q. Was this house in this alley which we haven't given a name to, was this house in the alley or Temple Court? A. The house was on
40 Delaware Avenue but the rear was in Temple Court. It extends from Temple Court to Delaware Avenue. The rear is on Temple Court and the front of the house, or this building rather, is on Delaware Avenue.

Q. Was he in the front, or when was he in the rear of the building? A. In the rear of the building?

Q. So he was in Temple Court? A. That is correct.

Q. Was that house the first house as you go into this alley going into Temple Court. A. It was either the first or second. I am not sure. I don't think it was the first. I think it was the second or third.

Q. And your car was parked right there at the junction of Temple Court and this alley, is that correct? A. Our car was parked, I guess you would call it the northwest corner, and he was on the northeast corner.

Q. In terms of where you were sitting, how far was he from you, pointing to perhaps one of the ladies or gentlemen of the jury in the box? How far was he from you? A. When we first drove up there, he would be further than any of these people in the jury box.

Q. He was coming towards the car, is that correct? A. No, sir; they were just standing there.

41 Q. I see. They were standing there. A. They were standing there passing things around.

Q. About how many men were standing there? A. I would say at least 12 or 13, probably more.

Q. Were there any women there? A. Yes, sir.

Q. How many women were there? A. I don't recall but one woman in the crowd. I don't recall but one woman being there, and that was Algie Patterson.

Q. So there were at least 13 people there, is that correct? A. I would say there were approximately 13 people, that is, for a short while. All of them left as soon as they saw us.

Q. Which side of the car did you get out on? A. The right side.

Q. Who did Officer Wilson start after? A. He started toward the defendant.

Q. Where was the defendant at that time? A. He was backing up in either the second or third doorway from the corner of Temple Court in the empty house there, that condemned house.

Q. And the man you were running after, where was he going? A. He was going out of the court.

42 Q. Out of Temple Court? A. That is correct. The way it happened, I was closer to Leroy and he was closer to the defendant.

Q. Is Leroy the man who was running? A. All of them were running.

Q. Who was the man you were running after? A. I started after

Leroy.

Q. All right. How far did you run up Temple Court to try to apprehend Leroy. A. I didn't go very far.

Q. From where you are sitting, how far did you run? A. From here to maybe where Mr. McLaughlin is sitting.

Q. And how far at that time was Leroy from you? A. He was some distance away from me; anyway, from here to that door (indicating); anyway that distance. He was no further than that.

Q. He was no further than that? A. Yes.

Q. Were there any other men running in the same direction that Leroy was running? A. Yes, sir.

Q. How many of those men would you say were in front of Leroy? A. I don't know.

Q. About how many men were running in the same direction that
43 Leroy was running? A. I don't know. It happened so fast, I couldn't tell.

Q. At any time between the time you started out of the car and the time you started running after Leroy, did you put your hands on any of those persons who were assembled there? A. Well, I got close enough at one time when I first got out of the car to almost -- well, I kind of grabbed one fellow, one fellow that was running at the same time as Leroy. I grabbed one of them and just about had him apprehended.

Q All right. Now, what happened to that man? A. I let him go when I saw what was happening to Agent Wilson.

Q. You understood my question. I said at any time between the time you got out of your car and the time that you started after Leroy, did you put your hands on anybody? A. From the time I got out of the car and the time I started after Leroy?

Q. That is right; did you put your hands on anybody, and your answer was yes; is that correct? A. Well, if my answer was yes, it was incorrect. I didn't understand.

Q. Le me ask you this Did you put your hands on anybody before you put your hands on this defendant? A. Yes, sir; I did.

Q. Who was this person? A. I don't know. I don't know who
44 it was.

Q. And that was before you started running after Leroy, is that correct? A. No, sir; that is when I started running after Leroy.

Q. Where was this fellow that you put your hands on when you first got out of the car? A. He was running -- he was in the bunch there. I don't know exactly whether he was closer to me or closer to Leroy, but he was in the group there, and when I started toward Leroy I put my hands on someone there.

Q. And you let him go? A. Yes, sir.

Q. And then you continued after Leroy? A. That is correct, sir -- no, sir, I didn't continue after Leroy. After I grabbed him, I let him go because of what was happening to Agent Wilson.

Q. How far was this fellow that you put your hands on, how far was he from Leroy when you put your hands on him? A. They were right together, almost together.

Q. And did you come across that fellow immediately after you got out of the car? A. Yes, sir; I started after Leroy and the two of them were together, at the time I started toward them.

Q. How many steps would you say you took from the car before you put your hands on him? A. I don't know.

45 Q. Was it as far as from where you are sitting to the Marshal seated to your left? A. I would say from here to maybe that table there (indicating).

Q. May I ask you this again: I think I asked you before, but want to get your answer. I want to be certain of your answer. How far did you run after Leroy? A. About from here to that table (indicating).

Q. What part of that table? A. The end of it, this end of it, maybe a little further.

Q. And you say when you put your hands on this other fellow, Leroy was right beside him? A. I was trying to get both of them, and I got one fellow but I didn't get Leroy.

Q. Was this going up into Temple Court? A. No, sir; Leroy and the other man, they were running out.

Q. Back? A. Toward Delaware Avenue, the direction Leroy had come when he came into the alley.

Q. And this man here was up in Temple Court, two or three houses? A. Two or three doors.

46 Q. That is right? A. The doors are about from here to there (indicating).

Q Each door went with a house? A. No, sir. The way that thing is built down there, there is not any separation. It is just a big building, a bunch of houses and all of them condemned and the doors about from here to this lady (indicating), probably less, were not any wider than that apart.

Q. But in any event, you testified that he was backing up in a door which was two or three doors removed from the corner of this alley. Don't you recall that? A That is correct.

Q. Did you see this defendant spit anything out of his mouth? A. Yes, sir.

Q. And you say this (indicating) is the bag that he spit out of his mouth? A That is the bag, sir.

Q. Where were you when you saw him spit this out of his mouth? A. I was over there with him. I was trying to control him. I was wrestling around. I was trying to get hold of him so I could keep him from getting away.

Q It was after you had put your hands on this first man after you had run for Leroy; is that correct? A. That is correct; yes, sir.

47 Q. At the time that he spit this out of his mouth, he was still up in the second or third door, is that correct? A. He had been struggling--

Q. I am asking you. Can you answer that question yes or no? A. No, sir; he wasn't right in the door.

Q. Where was he? A. He was some distance away from the door where he had backed into.

Q Was he going back up Temple Court? A I think he was. That is the direction he started to run in.

Q. That is right. In other words, he was still going in the same

direction? A. No, sir; he changed direction. First he backed into the door. Then when Agent Wilson grabbed him, he tried to go in another direction. He couldn't go back through the door. He was blocked and he had to come out the other way.

Q. So, in other words, he was going to the other end of the alley that you had come down? A. Not directly; at an angle. He was going slightly north.

Q. Can you explain this to me, Officer Aiken, as well as to the ladies and gentlemen of the jury and to His Honor:

48 How was it that with this defendant two or three doors up in Temple Court and your running after Leroy, your putting your hands on this other man who was going back toward the mouth of the alley that they had just come up into, which was in the opposite direction from Temple Court, how could you see what was going on between this defendant and Officer Wilson? A. Yes, sir. It is very simple and very easy. We parked our car over where he was standing. The houses are against the wall there. I had to run from here all the way past the house where he was standing if I had followed Leroy out of the alley, but instead of running the entire distance, I ran from the car to that table and I was still in Temple Court and could see all the way down the court.

Q. You weren't in your car when you were chasing after Leroy and this other man, were you? A. You asked me how far I had left the car and I said the distance from here to Mr. McLaughlin or the table.

Q. Maybe I don't visualize this. As I understand, as you describe Temple Court, running at a right angle of this alley that you have had under surveillance, that is correct? A. That is correct.

Q. Temple Court runs north and south? A. Yes, sir.

Q. And this alley that you had under surveillance runs east and west? A. That is correct, sir.

49 Q. Is that correct? A. That is correct.

Q. And originally you and Officer Wilson were in this Dy-Dee Wash looking up this alley at the westerly end of the alley, is that correct? Originally, you and Officer Wilson had this alley under surveillance at the easterly end, is that correct? A. Yes, sir.

Q. Then there came a time when you left the Dy-Dee Wash and came around to the alley at its westerly end, is that correct? A. That is correct; yes, sir.

Q. And there came a time when you went in the car down to the angle where Temple Court and the alley come together, is that right? A. Yes, sir.

Q. And it was at that point where these 13 people were mingling around, that is what you testified to, isn't it? A That is right.

Q. When you got out of your car this defendant proceeded up Temple Court about two or three doors. Is that what you testified to? A. Proceeded up--no, sir, I didn't testify to that.

Q You said he went up Temple Court, didn't you? A. I said he
50 backed into--

Q. A door in Temple Court? A. That is correct.

Q. And this door which you described in Temple Court is two or three doors from the mouth of Temple Court, isn't it? A. That is right.

Q. That is right? A. That is correct.

Q. But Leroy and this other man whom you had your hands on, they went down the alley in an easterly direction toward the mouth of the alley which you formerly had under surveillance, is that correct? A. That is right, but they left the same point.

Q. We know that, but the point they left was at-- A. Wilson and I made contact with his man at the same time in the alley. We made an angle. He went this way (indicating) and I went that way (indicating). We were still in the same court when we made contact.

Q. Officer Aiken, that warrant on Leroy is still outstanding, isn't it? A. No, sir; I think that warrant has been executed.

Q. When was it executed? A. I don't recall the exact day, but it was executed sometime shortly after that date.

Q. Did you execute it? A. I participated in the execution of that
51 warrant.

Q. What is Leroy's full name? A. Leroy Duvall.

Q. Leroy what? A Leroy Duvall.

Q. Spell the last name. A. D-u-v-a-l-l.

Q. Is he under indictment now? A. No, sir.

Q. Is he in custody now? A. No, sir.

Q. Do you know where he is now? A. No, sir.

Q. You took him into custody? A. I was one of the officers that participated in the execution of the warrant.

Q. What happened to him, do you know? A. He was arraigned before the Commissioner, I believe, and he was dismissed by the grand jury, or something.

Q. Dismissed? A. Yes, sir.

* * * * * *

52 Q. Officer Aiken, other than this defendant, on September 10 up at Temple Court, did you make any other arrests? A. Yes, sir; we took another man down with us, this Brown.

53 Q. Brown? A. Yes, sir.

Q. What is his first name? A. I can't think of his first name right now. I could get it for you.

Q. Was he indicted? A. He wasn't charged with anything.

Q. He wasn't charged with anything? A. Other than investigation.

Q. Was he one of the men who was running? A. Yes, sir.

* * * * * *

54 Q. Officer Aiken, did you ever strike this defendant? A. Yes, sir.

Q. How many times would you say you struck him? A. I recall striking him once.

Q. Just once? A. Wait a minute, twice.

Q. Did you ever use your knee on him? A. No, sir.

Q. You say that this defendant assaulted you? A. That is correct,

55 sir.

Q. As a result of that assault, did you receive any medical care or attention from the police surgeon? A. Well, I reported to the clinic the next morning, routine. I didn't receive any treatment, just a normal check.

Q. And he gave you a clean bill of health? A. Well, they didn't treat me.

Q. They didn't treat you? A. No, sir.

Q. And you went with Officer Wilson? A. No, sir.

Q. He went to the police surgeon, did he? A. He doesn't come from the Police Department at all.

Q. He doesn't come from the Police Department. As a result of this, you haven't taken any sick leave, have you? A. No, sir.

Q. And your testimony is that you only struck this defendant once, is that correct? A. No, sir. I first said once and then I said no, twice.

Q. What did you strike him with? A. I struck him with my fist once and I struck him with my head another time.

Q. With your hand? A. My head.

Q. At no time did you use your hands, just your fist and your
56 head? A. I used my hand in the struggle, but I struck him with my fist once and my head once.

Q. Where did you strike him with your fist, what part of his body? A. Somewhere up here (indicating). That is, I think it was his left side.

* * * * * *

58 REDIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. I show you Government's Exhibit 1 for identification which you identified yesterday. I asked you at the time did you recover the glassine paper with the six white capsules, whether or not they contained any Government stamps of any kind on them. A. No, sir; they didn't contain any Government stamps.

* * * * * *

61 FRED EARLE WILSON

was called as a witness for the Government and, having been dirst duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. Your full name is what, sir? A. Fred Earle Wilson.

Q. And you are employed where? A. I am a narcotics agent of

the United States Treasury Department.

* * * * * *

Q. And on September 10 of 1956, what hours were you working as a Federal Bureau of Narcotics agent? A. From 9 in the morning until 5 in the afternoon.

* * * * * *

62 Q. Where did you go with Officer Aiken on September 10 of 1956? A. To the 400-block of Delaware Avenue, Southwest.

Q. Is that in Washington, D. C.? A. Yes, sir.

Q. What time would you say you arrived in that immediate vicinity? A. About quarter of 4.

Q. When you arrived in that immediate vicinity, what did you do or where did you go? A. We went to the Dy-Dee Wash Building that is located there.

Q. Prior to going to the building, what did you do with the automobile? A. We parked it on the parking lot.

63 Q. Where was the parking lot? A. It would be the south end of the Dy-Dee Wash building.

Q. After parking the automobile, where did you go? A. We went into the laundry itself.

Q. And when you went into the laundry, did you station yourself in any particular place in the laundry? A. Yes, sir.

Q. Where did you station yourself in the laundry? A. At various times I was in the boiler room and in a packing, I suppose it would be described as a packing room.

Q. On those occasions, was Officer Aiken with you? A. Most of the time.

Q. Did you have a conversation with Officer Aiken prior to going to that immediate vicinity? A. Yes, sir.

Q. And with Officer Aiken, were you going to that immediate vicinity for any particular purpose? A. Yes, sir.

Q. What was that purpose? A. To arrest a man by the name of Leroy.

Q. After stationing yourself in this laundry on this occasion for that period of time, did there come a time when you did leave that laundry? A. Yes, sir.

64 Q. And what time would you say that was? A. At approximately 6 o'clock.

Q When you left the laundry, did anyone leave with you? A. Yes, sir.

Q. Who left with you? A. Officer Aiken.

Q. Prior to leaving the laundry with Officer Aiken at that time, was there any particular reason for leaving the laundry at that time? A. Yes, sir.

Q. What was that? A. We saw a man who fitted the description of Leroy.

Q. Where did you see that man? A. We saw the man walking on Delaware Avenue into an alley.

Q All right. When you saw this man fitting the description of Leroy, what did you and Officer Aiken do? A. As soon as we saw the man go into the alley, we went out and got into the Government vehicle, drove on Delaware Avenue to Canal Street and across Canal Street down to First Street and back into the court.

Q. What court? Has that got a particular name, that court? A. I believe they call it Temple Court.

65 Q. Temple Court? A. Yes, sir.

Q. Or Temples Court? A. Well, that is close enough.

Q. When you saw this man who you say fitted the description of Leroy, did you see anyone else in the immediate vicinity as he entered the alley? A. Yes, sir.

Q. How many other people did you see at that time, approximately? A. About fifteen.

Q. And where were these fifteen at the time you saw this Leroy approaching the alley? A. They were loitering in the 400-block of Delaware Avenue around the store that is located at the entrance of the alley and in the alley.

Q. After you say that you observed what you have already testified to and you got in the automobile and you went around and came in the alley in the auto, is that right? A. Yes, sir.

Q As you came in the alley, did you observe anything? A. Yes, sir.

Q. As you came in the alley in the automobile, what did you observe? A. We observed Leroy passing things out.

66 MR. PARKER: I object to that, Your Honor.

THE COURT: Overruled.

BY MR. McLAUGHLIN:

Q. Passing things out to whom? A. The people that had been loitering in the area.

Q. And whereabouts were they in this particular alley? A Leroy was facing east. The people that he was talking with were facing west or facing us as we drove east in the alley.

Q. As you drove east in the alley, when you first observed this group of people, how far away from you were they or from your automobile? A. I don't understand your question.

Q. All right, I will try to reframe it. You say as you entered this alley you observed this group of people, is that right, in the alley? A. Yes, sir.

Q. As you came in the alley and observed these people, how far up in the alley were they in the alley or from your automobile as you started in the alley? Do you understand me? A. Yes, sir. My recollection is that most of those buildings are being razed, and as we drove into the alley we could see the length of the alley.

Q. And as you drove into the alley, you say you saw this group of people, is that right? A. Yes, sir.

67 Q. How far away were they from you when you first observed them as you came in the alley? A. That is a short alley. I would say 75 or 100 feet.

Q. Away from you as you came in the alley? A. Yes, sir.

Q. As you came in the alley, then what happened? A. We observed

it, or I observed the people, observed this man Leroy, and these other people, and they were engaged in conversation and there was a lot of activity.

Q. What do you mean by activity? A. Well, he was handing things out to people and they were handing what appeared to be money back to him.

MR. PARKER: I object to that, Your Honor.

THE COURT: What is the objection?

MR. PARKER: He said what appeared to be money. He is drawing a conclusion there.

THE COURT: What do you mean when you say "appeared to you?"

MR. PARKER: And he was 75 or 100 feet away.

THE COURT: You can argue that later. What did you see? Tell what you saw.

THE WITNESS: I would see the man hand something to the people we had been observing and they would, in turn, hand something back to the individual named Leroy.

68 THE COURT: All right, that will be stricken out, what appeared. Tell us what you saw.

BY MR. McLAUGHLIN:

Q. What happened next? A. We were moving into the alley, and as we approached them, somebody yelled, "Here come the police." I stopped the car and Officer Aiken got out one side of the car. I got out of the other. I saw a man standing in the doorway, and he put something in his mouth and I went over to arrest him.

Q. Who was that man? A. Osborne.

Q Do you see him in court here today? A. Yes, sir.

Q. Will you point him out, please. A. The gentleman at the counsel table with the jacket on.

Q. When you observed this group of men and you say Leroy was passing things out, can you tell us whether or not that the defendant was among that group? A. Yes, sir; he was.

Q. When you say you saw the defendant put something in his mouth,

what happened next? A. I had my badge in my hand as I got out of the car, and I went over and identified myself as an agent of the Police Department or the Treasury Department, and told him that he was under
69 arrest.

Q. Then what happened? A. He started to run from the doorway. I reached out and grabbed him by the back of his jacket and he turned around and hit me on the left side of the head.

Q. What happened when he struck you on the left side of the head? A. I fell down, and I grabbed him by the waist as I fell.

Q. Then what happened? A. Then a struggle ensued, and Officer Aiken came to my assistance.

Q. Then after Officer Aiken came to your assistance, what happened? A. Osborne spit something from his mouth and Officer Aiken picked it up, and I was still battling Osborne, and then Aiken came to my assistance again.

Q What do you mean when you say you were still battling Osborne? A. It took us about five minutes to subdue the man. Every time we would get him down and get him to the car he would make himself rigid and scream and then wouldn't get into the car and started all over fighting again.

Q. Did he strike you about the body? A. Yes, sir.

Q. Where abouts on the body did he strike you? A. He hit me in
70 the head several times, and the chest region.

Q. Did you at any time strike him? A. Yes, sir.

Q. What did you strike him with? A. My fist.

Q. Where and how? A. I hit him in the face several times, and in the ribs several times.

Q. And the purpose of striking him was what? A. Trying to use a reasonable amount of force to bring him under control so we could return him to Headquarters.

Q. Did you see Officer Aiken pick up the package that the defendant had spit from his mouth? A. Yes, sir.

Q. I show you Government Exhibit marked for identification No. 1, and ask you if you can identify that. A. Yes, I can identify it.

* * * * * *

71 Q. As the substance; as the capsules I mean the white powder that Officer Aiken picked up in the alley. A. Yes, I identify it as the same package.

Q. During the arrest of the defendant in that alley, did you at any time strike him with any object of any kind? A. No, sir; I had neither a gun nor a blackjack nor handcuffs with me at the time of the arrest.

Q. You did strike him with your hands, is that right? A. That is right, sir.

* * * * * *

CROSS EXAMINATION

BY MR. PARKER:

Q. Did Officer Aiken, Officer Wilson, strike him with any object other than his fist and his hands? A. Not that I saw, sir.

Q. How many times would you say that Officer Aiken struck him with his fist? A. As I said, it took about five to ten minutes to arrest the man, and it was a fight the whole way.

Q. How many times would you say that you saw Aiken strike him
72 with his fist? A. I haven't any idea, sir.

Q. Did Officer Aiken have any other object in his hand? A. No, sir.

Q. You say there came a time when Officer Aiken, or at least when you saw this defendant in the doorway following which you went up to him and he struck you and you fell to the ground, was it at that time that Officer Aiken came to your rescue? A. Yes, sir.

Q. At the time that Officer Aiken came to your rescue, were you wrestling with this defendant on the ground? A. At that time, no, sir.

Q. You had regained your feet? A. After Officer Aiken came to help me, I got back on my feet.

Q. Where had Aiken been at that particular time, I mean prior to the time he came to your rescue? A. He got out of the car and what he did I don't know until he came to help me, because I was fully occupied.

Q. Was he going in the same direction that you were going, sir, when he got out of the car? A. I can't tell you. I don't know.

Q. You were in the doorway, two or three doors up Temple Court, is that correct? A. No, sir.

73 Q. Where did you see this defendant? A. In the doorway of the first building. It is the corner of Temple Court.

Q. It was in Temple Court, however? A. I believe it is Temple Court. It was the alley that runs east and west between First Street and Delaware Avenue, Southwest. The other part of the alley runs north and south from Canal Street into the alley.

Q. So you were in the alley when you apprehended this defendant. You were in the same alley that you had under surveillance, is that correct? A. Yes, sir.

Q. And you were about one doorway down that alley where it intersects the alley running north and south? A. I didn't understand the question.

Q. You apprehended this defendant in the same alley that you had under surveillance when you were in the Dy-Dee Wash, is that correct? A. Yes, sir.

Q. And that alley runs east and west, is that correct? A. Yes, sir.

Q. And you say that he was in a house that was one door removed from the corner? A. He was in a doorway?

74 Q. Yes. A. My recollection is that it is the corner house.

Q. All right. And is it the corner from the Delaware side that you had under surveillance? A. I couldn't see the doorway that he was in from the Delaware street side or from the observation on Delaware street.

Q. Would you say that it was a doorway that was closer to the Delaware side which you formerly had under surveillance? A. Yes, sir; that is true.

Q. And compared to the alley, to the west side of the alley which you drove into? A. That is correct.

Q. It was near the east side of the alley rather than the west side of the alley? A. That is true.

Q. And you had formerly had the east side of the alley under surveillance? A. The part of the alley we had under surveillance, you

couldn't see from the laundry; where Osborne was arrested, that part of the alley couldn't be seen.

Q. This part of the alley in the doorway that Osborne was in was nearer the east side of the alley rather than the west side? A. Yes, sir.

Q. And it is your recollection that this doorway was one or two
75 doorways removed from Delaware Avenue or the east side of the alley, is that correct? A. The doorway is located on the alley that runs north and south. It is the first, it is my recollection it is the first building with a doorway in it. It appeared to be like a basement entrance to this house.

Q. You are sure of this now? A. That is my recollection.

Q. Is it your best recollection? A. Yes, sir.

Q. You say that there were approximately fifteen people there at the time. Were those fifteen people there when you came into the west end of the alley? A. When we came into the alley there was probably more people.

Q. How many more people, would you say? A. There was quite a crowd during the apprehension of Osborne. I would say maybe fifty people accumulated.

Q. I am not referring to that. I am referring to the time that you say you saw this man called Leroy with these people around him. Was there ever a time when there were more than fifteen people around him? A. I don't believe so.

Q. And give me your estimate, sir, as to the number of women who were possibly in this crowd of fifteen. A. I can recall one.

76 Q. You had seen this man Leroy before, had you not? A. No, sir; I had never seen him before.

Q. When did you first know that he was the subject of an arrest, or at least when did you know there was a warrant out for him? A. The afternoon of September 10.

Q. And that was about 3:30? A. Yes, sir.

Q. And I think you testified on direct examination that it was only at 3:30 that you first saw Officer Aiken that day. A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. At 3:30 was the time that you first saw this description of Leroy? A. Sometime during the ride to Delaware Avenue, or while we were in the building, Officer Aiken told me about the description of Leroy.

Q. Describe him to me. A. He told me that he was about 5 foot 8; about 170 pounds. I think that is about all he told me.

Q. What complexion was he? A. I don't believe that he told me.

77 Q. And that was all that he told you; 5 foot 8, 170 pounds? A. He told me he had an informer who was in the area and the informer was to signal him when Leroy arrived with the narcotics for sale. This informant, by pre-arranged signal, was to tell Aiken that it was the man we were looking for.

Q. And this informer did make such a signal, is that correct? A. No, sir; by prior arrangement,if the man had not come by 6 o'clock he was to call Officer Aiken at the office and get further instructions from him. And at 6 o'clock, when the informant went to make the call, Leroy came into the area.

Q. Well, now, which one of you two officers first identified Leroy? Was it you or was it Officer Aiken? A. I believe it was a simultaneous recognition.

Q. Officer Aiken had seen this man Leroy before, is that correct? A. I don't recall that he told me that he had.

Q. However, Officer Wilson, how far was this Dy-Dee Wash in which you and Officer Aiken were stationed, how far is this Dy-Dee Wash and the point of vantage which you had from this alley across the street? A. The building, I believe, is triangular, and the points of observation

78 would change. At the north end of the building, it would probably be about 20 feet to the street, and then across Delaware Avenue, and --

Q. I am not talking about across Delaware Avenue. I want to know about the alley. Are you saying it is 20 feet? A. It would be about a total of 75 feet.

Q. And from where you were sitting, would you estimate it would be 75 feet? A. I would say 75 feet would be probably twice as long as this courtroom.

Q. Twice as long as this courtroom? A. Yes, sir.

Q. How far would you estimate 20 feet to be? A. About from where I am to maybe to you.

Q. That is your estimate of 20 feet? A. Yes, sir.

Q. Where was Leroy when you first saw him? A. Walking southwest on Delaware Avenue.

Q. And would that be in the direction of the eastern entrance of this alley? A. Yes, sir.

Q. And was he walking north toward the alley or south toward the alley? A. He was walking south.

Q. Walking south toward the alley? A. Yes, sir.

79 Q. And where were you at that time in the building? A. I was in the packing room.

Q. Where is that? A. That would be at the east end of the building or the north end of the building.

Q. And this was about what time? A. About around 6 o'clock.

Q. All right. How many men were standing out there in that vicinity of that alley at that particular time? A. Approximately fifteen.

Q. Was it light or was it dark at that time? A. It was light.

Q. What did he have on? A. He had on a gray hat with a dark band, and I believe a sport shirt.

Q. What color sport shirt? A. I believe it was green or gray.

Q. Was it a green similar to this chair (indicating)? A. No, sir.

Q. Was it lighter than that? A. Yes, sir.

Q. Would you say it was a chartreuse green? A. No, sir.

Q. Had you been informed, or at least had you been advised by

80 the informer that he would have on this green sport shirt? A. No, sir.

Q. Did you apprehend Leroy at that time? A. No, sir.

Q. What was the closest you ever were to Leroy? A. Ten feet.

Q. What was the closest that Officer Aiken was to Leroy? A. I don't know.

Q. Both of you got out of the car simultaneously, didn't you? A. Yes, sir.

Q. Where was Officer Aiken when you were within 10 feet of Leroy? A. He was in the car.

Q. Were there any other police officers on this detail? A. Yes, sir.

Q. Did any other police officers come to the scene when you made the arrest? A. No, sir.

Q. Who were the other police officers? A. Detective Thomas, Alton Thomas, and another narcotic agent by the name of Thompson.

Q. You say that Officer Aiken picked up something off of the ground, is that correct? A. Yes, sir.

81 Q. When you walked up to this defendant, sir, and as you state you pulled out your badge or your credentials and indicated to him that you were a police officer, what did he say to you? A. He didn't say anything.

Q. He never said anything to you at all? A. Not at that time.

Q. At any time before Officer Aiken came up, what did he say to you? A. He didn't say anything until we tried to get him in the automobile and he would say, "Let me up. I will get in the car," and we would try to get him in the car, and when we got him to the car he yelled and said he wanted his mother. He started to run, and three or four times he broke away. That is the only conversation I had with him.

Q. You say he tried to break away two or three times? A. Yes, sir.

Q. At that time you and Officer Aiken had your hands on him? A. Yes, sir.

Q. Did you make any other arrests there, Officer Wilson? A. The only other arrest was a man by the name of Matthew Brown.

82 Q. What did you charge him with? A I don't know what they charged him with, sir.

Q. Since September 10, have you seen Leroy? A. Yes, sir.

Q. Where did you see him? A. In the Court House.

Q. Is he under indictment? A. I couldn't tell you, sir. I don't know.

Q. Did you appear before the United States Commissioner in connection with this case? A. Before the Commissioner -- with Osborne?

Q. No, in connection with his case, Leroy's case. A. No, sir; I did not.

Q. This warrant that you said was for Leroy Duvall, is that correct? A. It was for an alias "Leroy."

Q. An alias "Leroy"? A. Yes, sir.

Q. Officer Wilson, have you lost any time off from work since September 10? A. No, sir.

MR. PARKER: No further questions.

REDIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. As a result of what happened in that alley on September 10,
83 1956, did you suffer any ill effects as a result of that? A. Yes, sir; I had a headache for several days.

* * * * * *

ALTON THOMAS

was called as a witness for the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

* * * * * *

Q. On September 10, 1956, were you a member of the Metropolitan Police Department? A. I was.

* * * * * *

84 Q. And on September 10 of 1956, do you recall seeing Officer Aiken and Agent Wilson? A. Yes, sir.

* * * * * *

Q. As a result of the talk that you had with them at that time, did you go any place? A. Yes, sir.

Q. Where did you go and who went with you, if anyone? A. We

went Southwest.

* * * * * *

85 Q. Where did you go in the Southwest section of Washington with this agent on September 10 of 1956? A. It was in the vicinity of Delaware Avenue and E Street.

Q. What time would you say you arrived down there? A. It was approximately 4, because we were supposed to be there at 4 o'clock.

Q. How long did you remain in that immediate section? A. We stayed there from about 4 until about 6.

Q. And you said you were parked where? A. Near Delaware Avenue and E.

86 Q. While parked in that immediate vicinity that you have just stated, did you see Officer Aiken or Agent Wilson? A. No, I didn't.

Q. After going down there and parking, did there come a time when you did see Officer Aiken and Officer Wilson? A. Yes, I did.

Q. Where were they at the time that you saw them? A. That was in the office of the Narcotics Squad.

Q. At approximately what time would you say that was? A. That was between 6 and 6:20.

Q. Was there anyone else with them in the Narcotics Squad office at that time? A. Yes, sir; the defendant there (indicating).

Q. You say "the defendant." Was he with them at that time? A. Yes, sir; they brought him in there.

Q. Did you have any occasion to talk to the defendant at the time you saw him at Police Headquarters? A. Yes, I did.

Q. I will show you Government's Exhibit marked for identification No. 1, six capsules containing a white powder, and I will ask you if you had any conversation with the defendant Osborne in reference to those narcotics, those six white capsules. A. Yes, I did.

87 Q. Tell us, if you will, what you said to the defendant and what the defendant said to you, as near as you can recall, about those six capsules of white powder. A. I asked him where did he get them from. He said he got them from a man named "Skip," that he knew as "Skip."

Q. Was there any further conversation at that time? A. And I asked him what was Skip's name and he said he didn't know, other than he just called him "Skip."

Q. What else was said at that time? A. And I asked him if he didn't know Skip to describe him to me, and he said he was a small brown-skinned fellow. That is all he knew about him.

MR. McLAUGHLIN: I believe that is all I have of this witness, Your Honor.

CROSS EXAMINATION

BY MR. PARKER:

Q. Officer Thomas, you of course reduced all of this to writing, didn't you? A. When you say "reduced all of this to writing," you mean the conversation?

Q. That is right. A. No.

Q. Isn't it a usual thing to reduce it to writing when a person has been arrested and makes a statement like that? A. Some time.

88 Q. Why was this any different from any other time? A. Well, personally, I saw them take statements very seldom when I have more than one person. I seldom take them, and that is why. I seldom take statements.

Q. Did anybody take this statement down? A. That particular statement?

Q. That is right. A. I don't know whether they did or not, but I don't think so.

Q. Who was there? A. At the time we had the conversation with the defendant in the morning?

Q. Wait a minute. Mr. McLaughlin didn't say anything about morning. He said did you later have a conversation with this defendant when you got back to Headquarters that afternoon around 6:30, and you were testifying to what took place then, weren't you, sir? A. Yes, but you asked me who was there. I thought you meant during the full time that I talked with him.

Q. I don't know anything about the morning. The only thing that I know about is what you testified to in the afternoon of the 10th. A. At the

time I was talking, Officer Aiken got up and walked around, went out and came back. I don't know whether he was there when the defendant told me that, or not. He might have been, but I don't know, that afternoon, but
89 in the morning when we talked we talked before he came there.

Q. Was Officer Wilson there in the afternoon? A. He was in the office, yes. Part of the time he was in the office.

Q. Did you participate, on that afternoon, in any interrogation of this defendant in the presence of Officer Aiken and Agent Wilson?
A. Officer Aiken and I talked to him at length.

* * * * * *

90 Q. Did you ever hear him deny at any time that that bag was on his person at any time? A. Deny that it was on his person?

Q. Yes. A. No, I didn't. I didn't hear him deny it. He told me that it was his.

* * * * * *

91 Q. Why did you go down in the Southwest in the first instance?
A. Well, we had information that narcotics were being peddled in the Southwest, in that vicinity, so the agents, Detective Aiken and myself, and an informer met there and we were supposed to make a buy in the 400-block of Delaware Avenue, Southwest, and it was supposed to have been in front of a little store there and we were supposed to station ourselves where we could see the buy, see the transaction being made, and that is how we happened to be there.

Q. Where was the informer? A. He was in the vicinity where the buy was supposed to have been made.

* * * * * *

BY MR. PARKER:

Q. Did you see the informer at the time you were with the Narcotics agent? A We could see the informer at all times. We were
92 stationed where we could look right at him just like I am looking at the door there (indicating).

Q. Did you have any idea as to who the supposed or alleged peddler was? A. Yes; we had an alias, had a name that was supposed

to have been an alias, or his right name, one or the other, but he went by a certain name.

Q What was the certain name he went by? A. If I recall it right, I believe it was Roy, I believe.

Q. Roy? A. I think so. I am not too sure about that.

Q. Had you seen a picture of this man "Roy" before? A. I saw it after that.

Q. After the 10th? A. That is right.

Q. Did you see Roy at all on the 10th? A. I did not.

Q. What description did you have of Roy? A. Well, he was supposed to have been very dark and about your size, I would say, in height; very dark-skinned.

Q. How tall would you say I am, sir? A. I would say about 5 feet 6, 5 - 10.

Q. 5 feet 6 or 10? A. Yes, I would say you are about 5 feet 6 or 8. That is what I would say.

93 Q. What about his weight? A. About 160, 170 pounds.

Q. And what age?

MR. McLAUGHLIN: Is he describing you or Leroy?

THE COURT: Did you have any description of Leroy's age in the statement?

THE WITNESS: I don't remember anything about his age, but he was supposed to have been a fellow around 5 feet 6 or 8, about 38 years old, very dark. That is what an informer told me, said he was very dark.

BY MR. PARKER:

Q. Officer Thomas, this Government exhibit, who first showed this to you when you got back to Headquarters, Agent Wilson or Officer Aiken? A. Officer Aiken showed them to me.

Q. Where was Officer Wilson at that time? A. He was in the squad room there, but just where he was, I don't know, but I know he was in the squad room. He was in our office there, in the same room.

* * * * * *

95 JAMES L. YOUNG

* * * * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

* * * * * *

Q. And you are employed where? A. United States Treasury Department.

Q. And employed in what capacity? A. As a chemist.

96 MR. McLAUGHLIN: Mr. Parker, will you stipulate his qualifications?

MR. PARKER: Surely.

* * * * * *

BY MR. McLAUGHLIN:

Q. I show you Government's exhibit marked 1-A for identification and ask you if you received that. A. Yes, I did.

Q. You received Government's Exhibit 1-A for identification from whom? A. I received this from Officer Aiken of the Metropolitan Police Department on Wednesday, September 12, 1956.

* * * * * *

97 Q. And what did it contain? A The glassine bag I opened which, in turn, contained six gelatin capsules each containing a white powder.

Q. Did you make an analysis of the white powder? A. Yes, and I found in each case, the capsules being analyzed, the mixture consisted of heroin hydrochloride, a narcotic drug which is a derivative of opium, quinine hydrochloride and Mannitol, and the weight of the contents of the six capsules was 6.2 grains.

* * * * * *

(Witness excused.)

MR. McLAUGHLIN: The Government at this time, Your Honor, would like to offer in evidence Government's Exhibit 1.

THE COURT: It will be received.

(Government's Exhibit 1 previously marked for identification was received in evidence as Government Exhibit 1.)

98 MR. McLAUGHLIN: The Government rests its case.

MR. PARKER: May we approach the bench, Your Honor?

(At the bench:)

MR. PARKER: Your Honor, I wish to move for a directed verdict on behalf of the defendant Osborne with respect to Counts 1, 3 and 4 of the indictment. I don't think that the Government has sustained the burden of proof with respect to Count 1; and with respect to Counts 3 and 4, the most they have made out is that there was some reluctance on the part of this defendant to go to the scout car of the Narcotics Squad. I don't think they have indicated that the man actually assaulted them.

THE COURT: Didn't he say he struck him?

MR. McLAUGHLIN: Knocked him down.

THE COURT: What is your point on No. 1?

MR. PARKER: I am mindful of the law there; the presumption that arises from the law.

THE COURT: I will have to overrule your motion. Are you going to put the defendant on the stand?

MR. PARKER: Yes.

(In open court:)

THE COURT: You may proceed, Mr. Parker.

OPENING STATEMENT ON BEHALF OF DEFENDANT

MR. PARKER: Ladies and gentlemen of the jury, this is about the end of your short tenure as jurors, and you realize that opportunity is

99 afforded defense counsel, as was afforded the prosecuting attorney, to state what they hope to prove.

Mr. McLaughlin, before his witnesses took the stand, indicated what he and his witnesses hoped to prove in order to sustain the counts of this indictment. There are two counts involving narcotics and there are two counts with respect to an assault on the respective officers who were engaged in the arrest of the defendant.

With respect to the narcotics, I have no hesitancy whatsoever in putting the defendant on the stand, and he will deny that at any time he had narcotics in his possession. He will likewise deny that he made any

such admission to Officer Alton Thomas; that the narcotics which have been introduced were obtained by the defendant from a person by the name of "Skip."

We will produce witnesses who will show exactly what went on there in that particular alley on September 10, and they will indicate that if there was any assault, if there was any coercion, if there was any intimidation, it certainly was not on the part of this defendant Osborne, but rather it was on the part of Officer Aiken and Agent Wilson.

We will have one witness who will indicate the circumstances under which the question of the ownership as well the seizure of the so-called narcotic bag first came to light, and that witness will demonstrate and

100 testify at that particular time that Officer Aiken picked the narcotic bag up off the ground and the defendant was interrogated down there in that alley by both Agent Wilson and Officer Aiken as to where it came from and whether or not it was his, and the defendant steadfastly denied at that time that it was his.

I think, on the basis of that, that you have no alternative except to bring back a verdict of acquittal as far as this defendant is concerned.

If the Court pleases, the first witness I will call is Martha Surrette.

Thereupon -

MARTHA SURRETTE

was called as a witness on behalf of the defendant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PARKER:

* * * * * *

101 Q. Tell the ladies and gentlemen of the jury just what happened there that you saw. A. Well, I was going to the store, and as I come from the store I passed the boys standing there in the alley. I went on

102 in the house and then I heard a holler and I come to the door and when I got to the door that officer back there (indicating), he had the boy's hand. The other one had his hand and they were beating him in the face. He

(indicating) was the one that had the gun. I don't know whether he hit him with the gun or not, but I know he had it drawed on him. I didn't come down there. He was bleeding at the mouth.

Q. Who was bleeding at the mouth? A. He was, Lawrence was bleeding at the mouth, and then they went around the alley and they picked Leroy up and when they came through there, he was in the back of the car and this boy (indicating) was in the back of the car.

Q. Who was in the back of the car? A. Leroy, and then the officer hit him again and knocked his head back against the windshield in the car.

Q. At any time while you were there, Mrs. Surrette, did you see this man, Lawrence Osborne, hit or strike either Officer Aiken or Officer Wilson? A. No, I did not.

Q. At any time while you were there, did you see him resist them in any way? A. No, sir.

Q. Did you see him oppose them in any way? A. I did not.

Q. Did you see him impede them in any way? A. No, I did not.

103 Q. Did you see Osborne intimidate them in any way? A. No, I did not.

Q. Did you see Osborne interfere with them in any way? A. No, I did not.

Q. At any time while he was outside of that squad car, Mrs. Surrette, did you see this defendant, Osborne, on the ground? A. Yes, he was on the ground.

Q. Will you talk louder? A. He was on the ground because they had his arm like this (indicating); I mean one of the officers had his arm and one officer had this arm (indicating). That is the time I come to the door.

Q. Where was he at that time? A. He was on his knees.

Q. How far was he from the squad car at that time? A. Right up at the car.

Q. How far from where you are sitting, how far would you say the squad car was from Lawrence Osborne when you came to the door?

A. To there (indicating).

Q. To where this gentleman (indicating) is sitting? A. No.

Q. To the edge of the table? A. Yes.

104 * * * * * *

CROSS EXAMINATION

BY MR. McLAUGHLIN:

Q. How long have you known the defendant Osborne? A. Oh, about 10 or 12 years.

Q. And has your acquaintance with him been in Temple Court those 10 or 12 years? A. Yes, sir.

Q. Do you know whether or not he lives in Temple Court? A. No, he don't live in Temple Court.

Q. Do you know what brings him to Temple Court? A. He comes down there to see a friend. He used to come there to my house.

* * * * * *

108 Q. When you came to the front door, what did you see? A. I saw the detective beating the boy.

Q. What detective did you see? A. Both of them were hitting him.

* * * * * *

109 Q. What did you see the other officer do? A. He were beating
110 him.

Q. How was he beating him? A. He were beating him in his face with his fist, but he wasn't the one that hit him in the car.

Q. Let's take it gradually. When you first looked out, you saw him with his arms behind him; is that right? A. Yes.

Q. And you saw Officer Aiken do what? A. I saw him beat him in the face.

Q. With what? A. With their fists at the time, and this officer back here (indicating) drawed a pistol on him.

Q. What did you see the other officer do? A. Beating him in the face. I didn't see the other officer draw no pistol.

Q. You say you saw Officer Aiken draw a pistol? A. Yes.

* * * * * *

111 Q. Where were these other people in the alley in reference to where the police officers were beating the defendant? A. They were standing down there looking, standing all around. I don't know who all those people were who gathered around there.

Q. Were they all standing around the police officers? A. No, they wasn't close to them.

Q. What? A. They wasn't close to them.

* * * * * *

113 Q. What part of the automobile did they shove him in? A. In the back.

Q. Was there anybody else in the back at that time? A. No, sir.

* * * * * *

115 Q. This man Leroy, do you know what this man's name is? A. No, all I know is Leroy.

Q. How long have you known Leroy? A. I don't know him. I just happened to see him.

Q. Did you see him down around the court there all the time? A. Most likely he would be around down there.

Q. What? A. Yes, he would be around down there.

Q. Isn't it a fact that the other man that was arrested at that time was the man by the name of Brown, not Leroy? A. Brown?

Q. Yes. A. Leroy was the one I saw.

116 Q. What? A. His name may be Leroy Brown. I don't know his name, but they always call him Leroy.

Q. Are you sure it wasn't Brown? A. That is what they all called him, Leroy.

Q. What? A. They called him Leroy around there.

Q. You saw the man, didn't you? A. Sure, I saw him.

Q. And you know him when you see him? A. Sure I know him when I see him.

Q. You see him down around the alley there? A. Yes, I see him down around the alley.

Q. How was he dressed? A. I don't know.

Q. You don't know? A. I didn't pay any attention. I mean, when they passed by, I didn't pay any attention.

Q. When this car came through the alley, was it going fast or slow? A. It wasn't going too fast, and it wasn't going too slow.

Q. You had no trouble seeing what was happening in the car?

117 A. No, I said it wasn't going too fast because they passed right by my door.

Q. What kind of a car was that? A. All I know it was a black car. I don't know.

Q. Was it an open job where the top comes down? A. I don't know. I just don't know.

* * * * * *

118 BARBARA ANNE KNIGHT

was called as a witness for the defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q. Give me your full name. A. Barbara Anne Knight.

Q. Where do you live? A. 431 Delaware Avenue, Southwest.

Q. Do you know Lawrence Osborne, the defendant there?

A. Yes, I do.

Q. How long have you known him? A. I have been knowing him for about four years.

Q. Directing your attention, Barbara, to September 10 of last

119 year, September 10 of 1956, were you living at this Delaware Avenue address at that time? A. Yes, I was.

Q. Directing your attention to thel late afternoon, around 6 o'clock in the afternoon, did you happen to see this defendant, Lawrence Osborne, down near your house? A. Yes, I did.

Q. Do you know an Officer Aiken? A. Yes, I do.

Q. Is that the officer (indicating)?

(Officer Aiken rose.) A. Yes, it is.

Q. Did you see Officer Aiken around that time, too, on that same date? A. Yes, I did.

Q. Barbara, tell the ladies and gentlemen of the jury, as well as His Honor, what you saw take place between Lawrence Osborne and Officer Aiken at that time. But before you answer that, let me ask you this: Was there some other person with Officer Aiken at that time? A. Yes, there was.

Q. Was that other person white or colored? A. He was white.

Q. Have you seen that person here today? A. Yes, I have.

120 Q. At the time that you saw Lawrence Osborne, was this other person whom you described with Officer Aiken at that time? A. Yes, he was.

Q. Will you tell us what took place, what you actually saw? A. Well, I was in my back, my kitchen. My front is Delaware and my back is facing Temple Court. Well, I had my back door open at the time and I heard all this confusion out in the alley and I seen people coming down the alley so I looked out too. When I got out, I seen the two officers had Lawrence beating him. One had his arm behind and this other officer had this arm (indicating) and, well, I heard Lawrence Osborne saying, "Please, please stop beating me, stop beating me."

Then he said, "I am going. Don't hit me any more. Please stop hitting me."

Well, I think it was Officer Aiken is the one, he hit him again in the face and he started bleeding from the mouth and this white one kicked him with his knee in the back, and so Lawrence, Officer Aiken, he picked up something off the ground that was wrapped in paper. I don't know what it was, but he picked this up off the ground and he told Lawrence Osborne, "You dropped this."

Lawrence said, "I didn't; I didn't."

Officer Aiken said, "You did," and Officer Aiken picked it up and

121 put it in his pocket. Then they put him in the car, and he hit him again, and I went on in my back.

MR. PARKER: No further questions. One further question, if the Court please.

BY MR. PARKER:

Q. Did you see Lawrence Osborne at any time assault either one of those two men? A. No, I didn't.

Q. Did you see Lawrence Osborne at any time resist any one of those two men or both of them? A. No, I didn't.

Q. Did you see him oppose them or impede them or interfere with them? A. No, I didn't.

Q. Did you see him interfere with them in any way? A. No, I didn't.

Q. Did you know that these men were police officers? A. At first I didn't.

Q. Did you see anything drop from Lawrence Osborne's person which Officer Aiken said had dropped? A. No, I didn't. I just seen it when it was laying on the ground.

Q. How long had you been out there when you saw Officer Aiken pick this up off the ground? A. I had been out there about three minutes.

122 Q. And during that three minutes, how far was Lawrence Osborne from you, when you came out there? A. He was about from here to where this man is (indicating).

Q. To where he is sitting here? A. That is right.

Q. Was he that far from you when you saw Officer Aiken stoop down and pick up something off the ground? A. Yes.

Q. And you say that at that time Lawrence Osborne denied that he had dropped anything or that it was his? A. He denied it.

Q. Incidentally, Mrs. Knight, did you see any weapon at that particular time? A. Yes, I saw a gun.

Q. Who had that gun? A. Aiken, the colored one.

Q. What was he doing with the gun? A. He told him if he tried to get away he would hit him with it. That is all I heard him say.

Q. Was Osborne trying to get away at that time? A. No, I didn't see him try to get away.

MR. PARKER: No further questions.

CROSS EXAMINATION

BY MR. McLAUGHLIN:

Q. Did you see Osborne on the ground? A. Did I see him on the

123 ground?

Q. Yes, ma'am. A. Yes, I did.

Q. Did you see any of the police officers on the ground? A. Yes, they were beating him.

Q. Were they on the ground, too? A. Who, the officers?

MR. PARKER: She said yes.

MR. McLAUGHLIN: Wait a minute.

THE COURT: Go ahead.

BY MR. McLAUGHLIN:

Q. Did you see them on the ground too? A. Yeah, they was on the ground beating Osborne.

Q. When they were on the ground, there was a regular tussle between the police officers and the defendant, isn't that right? A. No, it wasn't.

Q. Weren't they wrestling on the ground? A. He couldn't do anything.

Q. No, tell us what they were doing on the ground, what you saw. A. Well, I didn't see anything but the two officers was on the ground beating him, and he rolled over.

Q. Did the officers roll over too? A. No, the officers didn't roll over.

124 Q. By the way, how do you know the defendant? A. How do I know him?

Q. That is right. A. Because I have been knowing him ever since I was a little girl.

Q. You are quite friendly, aren't you? A. No, I am not quite friendly. He is just a neighbor of mine.

Q. Does he come to see you? A. No, he don't.

Q. How often would you see him in this alley? A. I wouldn't see him oftener than just about once a week.

Q. What time would you say it was? A. It was around about 1 in the daytime.

Q. One o'clock in the afternoon? A. Yeah.

Q. Do you recall what day of the week it was? A. It was on -- I don't know exactly.

Q. You don't know? A. Huh-uh.

MR. McLAUGHLIN: That is all.

MR. PARKER: How old are you, Barbara?

THE WITNESS: Nineteen.

MR. PARKER: No further questions.

125 * * * *

LAWRENCE SAMUEL OSBORNE,

the defendant, was called as a witness in his own behalf, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PARKER:

* * * *

Q. Directing your attention to September 10, 1956, you were in the neighborhood of Temple Court, is that correct? A. That is correct.

* * * *

Q. What were you doing there? A. I was on my way to pay my step-father $2 that he had loaned me.

Q. Where did your step-father live, Lawrence? A. My step-father lives on First Street, but the back of his house is facing on Temple Court.

Q. In other words, a portion of his house does border on Temple Court ? A. Yes, sir.

126 Q. Where had you been prior to that, Lawrence? A. Where had I been?

Q. Yes. A. I had been to my mother's building.

Q. Where was that, sir? A. That is at Third and Indiana Avenue.

Q. Your mother works there, is that correct? A. Yes.

Q. You had been there to see her? A. Yes. That is the Public Assistance Building.

Q. Had you ever lived down in Temple Court before? A. No, I haven't.

Q. Have you ever lived in Southwest area? A. Yes, I have.

Q. Where had you lived there? A. I was raised at 205 C Street, Southwest.

Q. How old are you? A. I am 27.

Q. Going back to this afternoon of September 10, 1956, will you explain what happened, in your own words; tell your story as to just what happened. A. All right. As I said before, I had came from Delaware Avenue. I was on my way through the alley to see if I could see my step-father in the alley because he mingles with the people that he knows there.

127 I was looking to see if I could see him. I was on my way through looking for him, and at that particular time, that is, as soon as I had walked around, walked around to get into Temple Court, this car drove up into the alley.

Now, there were a group of people in front of me and I don't know--they were heading in the direction of First Street when the car stopped. The people begun to run and that is when I was way up to Temple Court.

Well, when the car stopped, it stopped with force and so I turned around to see what it was and when I turned around to see what it was, that is when this officer Wilson, that is when he jumped out of the car and ran over to me and ran over and said, "Where in the hell are you going?" and struck me up the side of my head and knocked me down on the ground, which I have the bruise right now. I have the scar right now.

Q. Did you say anything to Officer Wilson at that time? A. No, I didn't.

Q. Did Officer Wilson at any time prior to striking you or immediately after getting out of the car indicate that he was either a Metropolitan or a Federal police officer? A. No, he did not.

Q. Tell me what happened after that. A. After he knocked me down, I asked him -- after he knocked me down, I asked him, I said, "What have I done?" He didn't answer me. He didn't answer me and he began to beat me about the face and about the head, on the ground.

128 Then I tried to get up off of the ground, but before I could get up

off of the ground, Aiken came over, which I didn't know he was an officer at that time. He came over and both of them joined in beating me and beating me by me trying to get up off the ground which I never got on my feet until I was near the car and when I did reach my feet, that is when Aiken pulled a revolver and pointed it at me and ordered me in the car and drove out of the alley.

Q. There has been testimony on behalf of Officer Wilson that you spit out this bag. I show you this, Government Exhibit No. 1-A, and the contents thereof. At any time, Lawrence, did you have that bag on your body? A. No, I didn't.

Q. At any time have you ever had possession of that bag? A. No, I have never.

Q. At any time, have you ever purchased narcotics? A. Never before in my life.

Q. At any time have you taken narcotics? A. Never before in my life.

Q. Do you know anyone by the name of Leroy? A. No.

Q. Do you know anyone by the name of Skip? A. Never heard of him.

Q. You heard Officer Thomas testify that after you went back to
129 Headquarters that you made a statement to him that these narcotics, you had obtained from a person by the name of "Skipper." Did you ever make such a statement? A. I never made any statement to Mr. Thomas or said that I knew Skipper. I never made any type of statement to him at all.

Q. Did you ever make a statement to him that you had gotten those narcotics which they claim were on you from somebody? A. No.

Q. When was the first time that the word "narcotics" was ever raised after you saw Officer Wilson and you saw Officer Aiken in that alley? When was the first time that the word "narcotics" was ever raised by them? A. When I was at Police Headquarters.

Q. What did they say or what did either one of them say? A. Mr. Aiken told me that I was going to be charged with the Harrison Narcotics Act. I asked him what for, and he said that he had some narcotics that

he was going to say belonged to me. I told him I never had any and which I had never seen any.

Q. Lawrence, may I ask you this question: Did you ever assault, resist, oppose, impede, intimidate, interfere with Officer Aiken or Agent Wilson? A. No, I did not.

* * * *

130 CROSS EXAMINATION

BY MR. McLAUGHLIN:

Q. You are the same Lawrence Samuel Osborne who, in 1952, was convicted of robbery, aren't you? A. Yes, sir.

Q. What were you doing down in the alley or the court? A. I was on my way to pay my step-father $2 which I had borrowed from him.

Q. And what time of the day was that? A. That was around between 4:30 and 5:00 o'clock, because that is the time that he gets off from work.

Q. Do you recall what day of the week it was? A. If I am not mistaken, it was Monday.

Q. Well, now, is that the first day you were ever in Temple Court? A. No, it is not.

Q. You hang around Temple Court quite a lot, don't you? A. I don't hang around any place. I have a wife and family.

Q. Were you working? A. Was I working?

Q. On September 10 of 1956. A. No, I wasn't working at that particular time. I was under the doctor's care.

* * * *

131 A. I say I wasn't working at that particular time because I was under the doctor's care.

Q. How long had you been out of work? A. Since I was under the doctor's care.

Q. How long was that? A. I was under the doctor's care from June 8.

Q. What? A. June 8. That was the day that I was taken to the Casualty Hospital from a taxicab accident.

Q. Have you been under the doctor's care all that time? A. I have been under the doctor's care ever since I came out of the hospital.

Q. How often do you go down and see Mrs. Surrette's son? A. Only when I was in the neighborhood.

Q. How often would that be? A. Sometimes once a week, sometimes every two weeks.

Q. Would you say you were pretty well acquainted down there in Temple Court? A. Only with the people that live in the neighborhood when I was living in the neighborhood.

Q. You didn't live in Temple Court, did you? A. No, but Temple Court was in the neighborhood where I said that I was raised at 205 C Street, Southwest.

Q. At the time the police came into this alley, you were in the court, weren't you, or in the alley? A. I beg your pardon?

132 Q. I say, when the police drove in, in the automobile, you were in the alley, weren't you? A. Yes, sir.

Q. And you say that where you were there was a group standing ahead of you? A. Yes, sir; I said they was walking ahead of me. I don't know whether they was going out of the alley on First Street.

Q. Were they running? A. Were they running?

Q. Yes. A. When I first seen them, no, they weren't running.

Q. Did there come a time when they were running? A. Yes, there did.

Q. When they were running, where were you? A. I was going up the alley to my right on my way to find my step-father.

Q. Was there a house there where you were? A. There were several houses. Barbara lives in the third house.

Q. What? A. I said there were several houses. Barbara lives in the third house.

Q. Who is Barbara? A. Barbara Knight.

133 Q. The girl who just testified? A. Yes.

Q. Did you see her out in the alley? A. Yes.

Q. Did you talk to her? A. I didn't talk to her.

Q. But you saw her there? A. I saw her there.

Q. When you saw her there, were the police talking to you? A. The police never talked to me.

Q. Never talked to you at all? A. No.

Q. I believe you testified on direct examination the only time they asked you about narcotics was in Police Headquarters, is that correct? A. That is correct.

Q. In the alley and in the presence of Mrs. Knight, didn't Officer Aiken show you this package (indicating)? A. No, he did not.

Q. You heard Mrs. Knight testify, didn't you? A. Yes, I did.

Q. So that you say nothing like that happened, that Officer Aiken never showed you the package in the alley and never told you that that
134 package came from you? A. Yes, sir; that is correct, because I was beaten so bad --

Q. No. --

MR. PARKER: Your Honor, I ask that he be allowed to finish his answer.

MR. McLAUGHLIN: He can explain that later.

THE COURT: Just a moment. Address your remarks to the Court. Go ahead with your questioning.

You can bring that out on redirect examination, if you wish.

BY MR. McLAUGHLIN:

Q. You say no conversation happened in the alley at all, is that right? A. No.

Q. In this alley with the police officers with you on the ground? A. Yes, I was.

Q. Were the police officers on the ground? A. No, I didn't see them on the ground.

Q. Didn't you wrestle with the police officers? A. No, I didn't. I tried to get to my feet when I was being beat.

Q. When you finally got to your feet, what did you do? A. I just
135 received a beating.

Q. Did you fight back? A. No, I didn't.

Q. You just stood there and let them beat you, is that right? A. I never fought back. I just laid there. I laid there, and then got up off the ground.

Q. You laid there. When you were lying there, did the police have hold of you? A. From one to the other did.

Q. How did they have hold of you? A. In my collar where the button is gone from my shirt.

* * * *

140 Q. And where did you get the $2 on this particular day to repay it? A. From a check that I received from Public Assistance.

Q. What? A. From a check that I had received from Public Assistance from being under the doctor's care.

141 Q. And you had just come from where on that particular day to go to your step-father's? A. I had left my mother's building.

Q. Your mother didn't give you the $2? A. No, I had $2.

Q. What was the occasion to go into the building of your mother? A. Because I had talked with her that morning, and I told her I was coming by there.

Q. For what purpose were you going by her building? A. Because I owed her some money and I had some things that I wanted to move over to her house.

Q. What? A. Because I had some things that I wanted to give her.

Q. You weren't going to give the things to her where she worked, were you? A. No; she had told me to come by her building. She wanted to see me.

Q. Didn't you know where she lived? A. Yeah, I knew where she lived, but she was at work.

Q. I thought you started to say you went there because you owed her some money and you wanted to give her some things. Isn't that what you said? A. Beg pardon?

Q. Didn't you start to say, in response to a question I put to you,

142 you were down to see your mother because you owed her some money and also because you wanted to give her some things? Didn't you say that?

* * * *

THE WITNESS: As I can recall, I did.

* * * *

Q. How long prior to this time had you been down to see your step-father? A. A week or a week and a half before that when I told you I had borrowed the $2 from him.

Q. Where did you meet him at that time? A. At which time?

Q. The time you borrowed the money from him? A. At his house.

Q. What time was that? A. I don't recall.

Q. What? A. I don't recall.

Q. You don't recall? A. No, I don't.

143 Q. Where is your step-father today, do you know? A. Where is he at -- I guess he is at work.

Q. He is not in court here, is he? A. Not to my knowledge.

Q. Getting back to the alley -- by the way, how big are you, how tall are you? A. How tall am I?

Q. Yes. A. I say 5 - 11, 6 feet.

Q. How much do you weigh? A. 148.

Q. What? A. I say the last time I was weighed I weighed 148. When I was committed to the jail, I weighed 148 pounds.

Q. 148 pounds? A. Yes, that is the last weight I seen. I might have gained more weight by being in the jail, but my last weight was 148.

Q. 148 pounds? A. Yes, sir.

Q. How long were you on the ground in the alley there with the police, do you remember? A. How long was I on the ground?

Q. Yes. A. As I recall it, I was on the ground, I will say around

144 3 to 5 minutes.

Q. How many different times were you on the ground? A. I can't recall how many.

Q. Would you say more than once? A. Yes, I would.

Q. What? A. Yes, I would.

Q. Would you say that you were fighting back these police officers? A. No, sir; I wouldn't.

Q. In other words, they just threw you on the ground and picked you up and threw you on the ground again, is that what you are saying? A. Yes, sir.

Q. What? A. Yes, sir.

Q. They picked you up and threw you on the ground and when you hit the ground they picked you up and threw you down again? A. Picked me up and struck me and knocked me down.

Q. Picked you up? A. No, he knocked me down.

Q. What did you do? A. What was I doing?

Q. Yes. A. I was trying to protect myself against the blows. I
145 was trying to cover up from the blows.

Q. When you say "trying to cover up from the blows," were they hitting you on the head with anything? A. Fists.

Q. With their fists? A. Yes.

Q. So you were covering up your head so they wouldn't hit you on the head with their fists? A. I was trying to. I didn't succeed.

Q. What color automobile was it they put you into? A. I don't remember.

Q. What? A. I say I don't remember.

Q. When they put you in the automobile, what part of the automobile did they put you into? A. The back.

Q. And did they put someone else in the back seat with you? A. After they drove out of the alley, they did put another fellow in the back seat.

Q. So that when they put you in the back seat, they put you in the back seat all by yourself, isn't that right? A. Yes, sir.

Q. And Officer Aiken and Officer Wilson sat in the front seat?
146 A. Yes, sir.

Q. And then they started out of the alley and they got near the mouth of the alley and then they picked up Brown, isn't that right? A. They came out and drove down to the corner and turned around and came back and then put Brown into the car.

Q. Where did they pick Brown up?

MR. PARKER: Has he testified that they picked him up?

MR. McLAUGHLIN: Yes.

BY MR. McLAUGHLIN:

Q. You say they went out of the alley and came back and put Brown in the car? A. Yes, sir.

Q. And they put Brown in the back seat with you, didn't they? A. Yes, sir.

Q. So that at no time in that alley was there a police officer in the back seat with you, is that right? A. That is right.

Q. What? A. That is right.

Q. Both police officers sat in the front seat of that car? A. That
147 is right.

Q. While you were in that automobile and seated in the position that you have just stated, did any of those police officers strike you? A. Officer Aiken did.

Q. How did he strike you with him sitting in the front seat? A. He was sitting beside the driver.

Q. In the front seat, isn't that right? A. Yes, sir; sitting beside the driver.

Q. All right. How could he hit you with you and Brown sitting in the back seat of that car? A. Because he turned around and leaned over the seat and struck me.

Q. And struck you? A. Yes, sir.

Q. Did he strike Brown at any time? A. No, sir.

Q. He didn't strike Brown at all? A. Not that I could see.

Q. You were right there, weren't you? A. Yes, sir.

Q. And when did he reach over the back of the seat and strike you? A. Right after Brown got in the car.

148 Q. Where was that in reference to Mrs. Surrette's house? A. I don't recall.

Q. You know where Mrs. Surrette lives, don't you? A. Yes, sir; but I don't recall where the car was located at the time that I was hit.

Q. What? A. I say I don't recall exactly where the car was when he hit me.

Q. You just testified they came back into the alley with the car and picked up Brown, isn't that what you said? A. No, sir.

Q. What? A. No, sir.

Q. What did you say? A. I said that he came back and arrested Brown in front of the store. Brown was standing in front of the store.

Q. And put Brown in the car? A. Yes, sir.

Q. This store is on the corner of what, Delaware and Temple Court? A. I would say it is -- I would say it is in the middle of the block of Delaware.

Q. So they went all the way out of the alley on Delaware Avenue, picked up Brown and came back in the alley again, is that right? A. That
149 is the direction we were heading.

Q. You came back into the alley, is that right? A. The car drove, I will say, a short distance in the alley. You see the alley -- the store is located here (indicating) and the alley is beside the store. The car pulled to the mouth of the alley and Brown was put in the car.

Q. You just testified that Brown was put in the car on Delaware Avenue, didn't you? A. The store is located on Delaware Avene. He was standing in front of the store.

Q. And they picked up Brown on Delaware Avenue, didn't they? A. Yes, sir.

Q. Then they put him in the car and drove back into the same alley? A. I say Idon't recall whether the car proceeded in the alley or not.

Q. You don't remember that? A. No, sir; because I was almost knocked out from the beating. That is why I say I don't remember.

Q. You say you were knocked out from the beating. Were you brought to Police Headquarters that evening? A. Yes, sir.

Q. And when you were brought to Police Headquarters, did you see Officer Thomas? A. Yes, sir.

150 Q. Did you talk to Officer Thomas? A. No, sir.

Q. You never said a word to him, to Officer Thomas? A. No, sir; I didn't say any conversation.

Q. Did Officer Thomas ask you any questions? A. No, sir.

Q. What happened? Just tell us how did you see Officer Thomas at Police Headquarters? A. I seen him in the room when the officer was -- the place when he said he was going to charge me.

Q. What officer was that? A. Officer Aiken.

Q. And Thomas just sat there? A. Sat or was standing. He was in the room, but I didn't pay too much attention whether he was sitting or standing.

Q. You never talked to him, at all? A. No, sir.

Q. What? A. Not that I can recall ever talking to him. I didn't never talk to him and he never asked me any questions.

Q. He never asked you a thing? A. No, sir.

Q. None of the officers at Police Headquarters asked you any
151 questions about these narcotics? A. Officer Aiken.

Q. Officer Aiken? A. Yes, sir.

Q. He is the only one, is that right? A. Yes, sir.

Q. And you are sure Officer Thomas never said anything to you about narcotics? A. No, sir; not concerning narcotics; no, sir.

Q. About this particular package here (indicating)? A. No, sir.

Q. When you were at Police Headquarters, were there any marks on your face? A. My face was swollen up.

Q. Swollen up? A. Yes, sir; and my mouth was busted open on the inside.

Q. Was it bleeding? A. Yes, sir.

Q. What other marks did you have about your face? A. My face--my mother--

Q. No, just tell us what you saw, tell us the condition of your face. A. It was swollen, and my mouth was cut open on the inside.

Q. What else? A. And just swollen on the outside.

152 Q. What else? A. Dirt on the side of my face.

Q. Were there any other marks on your face? A. Not that I can recall, sir.

Q. What? A. Not that I can recall.

Q. Did you receive any medical treatment? A. No, sir; but I asked for some.

Q. Did they send you to the hospital? A. No, sir.

Q. Didn't the Police Department take pictures of your face on that day? A. Did they take any pictures of me?

Q. Of your face. A. They took a picture of me standing.

Q. Didn't they take several pictures of you standing, face and all included? A. My face and all included?

Q. Yes. A. Yes, sir.

Q. Isn't it a fact that those pictures show no marks or any bruises on your face at all? A. I never have seen them.

* * * *

153 MR. PARKER: The defendant rests, if the Court please.

* * * *

ALTON THOMAS

* * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. Officer Thomas, you say that you talked to the defendant on September 10, 1956, when he was brought to Police Headquarters? A. Yes, in the evening and the afternoon.

Q. I mean immediately after his arrest. A. Yes, sir.

Q. And during that time, how close were you to the defendant? A. He was sitting right here (indicating) in a chair, and I was sitting right here (indicating).

Q. And during that time, did you observe his face? A. Yes, I observed his face.

Q. Did you see any swelling on his face, of any kind? A. No, sir.

Q. Did you see any bruises or any cuts around his lips? A. No, sir.

154 Q. Did he at any time complain to you that he had any injuries about his face or his mouth? A. No, sir; he didn't.

* * * *

CROSS EXAMINATION

BY MR. PARKER:

Q. At that time, Officer, was there any discussion of an altercation? A. No, there wasn't.

* * * *

FRED EARLE WILSON

* * * *

DIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. Officer Wilson, on September 10, 1956, when you placed the defendant under arrest in the vicinity of Delaware Avenue and Temple Court, what color automobile was it that you placed the defendant in? A. Blue.

155 Q. What color of blue? A. An aqua blue. It would be best described like the color of the ocean.

Q. And you say that you put the defendant in the rear seat of the car, is that right? A. Yes, sir.

Q. When you put the defendant in the rear seat of the car, what part of the car did you and Officer Aiken occupy? A. The front seat.

Q. And after you put the defendant in the rear seat of the car, where did you go? A. We drove out of the alley, started out onto Delaware Avenue. We started out on Delaware Avenue when we saw Matthew Brown whom we had seen previously. We stopped the car to get Brown. The alley goes on an incline and we couldn't get the car doors open and we had to go into the street and went back and put Brown in the back seat of the car with Osborne.

Q. At any time when the defendant was in the back of that car with Brown, did you or Officer Aiken reach back and strike him in the face? A. I think Officer Aiken reached back and grabbed him by the jacket and shook him as we were leaving the area.

Q. And after you left the area, did you ever drive back in the alley with the defendant in the rear seat of the car? A. No, sir.

156 * * * *

157 * * * *

REDIRECT EXAMINATION

BY MR. McLAUGHLIN:

Q. When the defendant was brought to police headquarters, was

there bleeding about his mouth? A. No, sir.

Q. Was there any swelling or lumps on his face at the time he was brought to Police Headquarters? A. No, sir.

* * * *

160 CHARGE TO THE JURY

THE COURT: Members of the jury, I will now undertake to instruct you as to the law and leave to you the determination of the facts.

The question for you to determine is whether this defendant, Lawrence S. Osborne, committed any one of four different crimes that are charged against him as having been committed on September 10 of last year.

Under the law, which is an Act of Congress, it is a crime for any person to purchase, sell, dispense or distribute narcotic drugs except in the original stamped package or from the original stamped package. In every case where a lawful sale of narcotics is made, it is required that the sale be made in a package that bears canceled stamps provided by the Government of the United States or, in some cases, the package may be broken, the stamped package, and the sale may be made from

161 that broken package. Any other type of sale or purchse or distribution of narcotic drugs is unlawful.

The Act of Congress goes further than that and says in the absence of appropriate tax paid stamps from narcotic drugs there shall be prima facie evidence of a violation by the person in whose possession the narcotics may be found. A case of this crime is made out, under the law, by showing possession of the narcotics and the absence of tax paid stamps on a package or other container in connection with the stamps.

The Government claims in this case, in respect of this first count or the first charge made against the defendant, that on this 10th day of September he had narcotics in his possession. The Government claims he had it in his mouth, the container with narcotics, and that there were no tax paid stamps on the container, and that this being so, according to the law, the evidence on its face shows that he violated this section of the law.

That means that under the law, if you have the possession and there are no stamps, then you do not have to prove there was a purchase or sale or a dispensing or a distributing as is mentioned in the Act.

The possession and the absence of stamps does not compel a verdict of guilty. It warrants one. That is what you mean by prima facie evidence, and that is the position taken by the Government. That is the way you apply the test to the first charge that is made against the defen-
162 dant.

Of course, the defendant's claim is he had no possession whatever; that he had nothing to do with this container that was found on the ground; he did not have it in his mouth; he did not throw it away. There is no contention or no difficulty, apparently, in the case so far as the unpaid stamps are concerned or the canceled stamps are concerned. His defense is he had nothing to do with the narcotics or with that powder or whatever it was that the officer picked up from the ground.

The question for you to determine is which version of this you accept or what inferences you draw from the facts as you find them.

There is another law, an Act of Congress, a different one, which makes it unlawful to import narcotic drugs into the United States except for medical and such other legitimate purposes as the Federal Narcotics Control Board finds necessary and those narcotic drugs which are imported are subject to duties or taxes imposed by the Government. The law provides, then, that if anyone receives, conceals, buys or sells or facilitates the concealment after importation of narcotic drugs, when they have been imported contrary to law, knowing the thing to have been imported contrary to law, he is guilty of a crime. And then the Act of Congress says that, in a trial for violation of the provisions of law which I have mentioned to you, when the defendant is shown to have had posses-
163 sion of a narcotic drug, such possession shall be sufficient evidence to warrant conviction, unless the defendant expains the possession to the satisfaction of the jury. There again the Government maintains, in this case, that this defendant, having had possession of narcotic drugs, that possession having been in his mouth, that under this law that is sufficient

evidence to warrant a conviction under this law which prohibits importation into the United States without payment of duties and having knowledge that the narcotics had been imported into the United States contrary to law, without payment of duties.

The Government takes the position that since this defendant had possession, you would find violation of this illegal importation with knowledge of its illegal importation on the part of the defendant.

There again, the defendant said he did not have possession, so that it is important in this case, of course, in respect of each of those two counts, for you to decide whether the defendant actually did have possession of narcotic drugs or of this container that was found on the ground and that it was testified contained this powder containing heroin, which is a narcotic.

If you find possession, and in the first instance find there were no canceled stamps on it, you would have a right to conclude guilt on the
164 part of the defendant in each of these two counts, the first two charges.

The third charge has to do with resisting an officer engaged in his official duties. There is an Act of Congress which provides that whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person while engaged in or on account of the performance of his official duties, is guilty of a crime. The third charge in this case is that this defendant assaulted and resisted the revenue officer named Fred E. Wilson in the efforts of Fred E. Wilson to arrest him.

An assault is an unlawful offer of force and violence, and the officer maintains that he did strike him; and further than that, that he resisted him and impeded his bringing about his arrest; that he was an officer of the Bureau of Narcotics engaged in his official duties of trying to make arrests and trying to investigate crimes with regard to narcotics; and that in so much as he did resist and did assault him, he is guilty of this crime.

The defendant, on the other hand, maintains that he did not assault the officer; that, on the contrary, the officer assaulted him. The defendant maintains that he made no resistance to arrest; that he did not strike the officer and did not impede him in bringing about his apprehension. There is a sharp conflict in testimony between the witnesses,
165 and it is for you, as jurors, to determine which statement of facts you find to be correct.

The final charge which is included in the fourth count of the indictment, is a similar one to the charge mentioned in the third count, only it relates to a different statute, and that statute is one in which the provision is that if any person, without justifiable and excusable cause shall use personal violence upon any member of the police force in the discharge of his duty, he is guilty of a crime. Count 3 deals with an officer of the Narcotics Squad. That is one statute, and that mentions, as I indicated to you, assaulting, resisting, impeding and interfering with the discharge of his duties; that is, a narcotics officer.

The fourth count, the one with which we are now concerned, is somewhat different. It relates to personal violence. It doesn't say anything about resisting. It relates to personal violence without justifiable and excusable cause, and here we are concerned with a police officer and not with a narcotics officer.

The Government maintains, in this case, as to this charge, that this defendant not only resisted and assaulted Officer Wilson, who was a narcotics officer, but that when Officer Aiken came to the help of Officer Wilson, then the defendant assaulted him, using personal violence against him and that he had no justifiable or excusable cause for doing it. The
166 Government maintains that this was a police officer who was engaged in carrying out his duties as a police officer and that, therefore, this defendant is guilty of the charge made in the fourth count of the indictment.

So far as the defendant is concerned, he maintains that Officer Aiken was not assaulted by him; there wasn't any personal violence exercised toward him, but that Officer Aiken joined with the narcotics officer in striking him and that Officer Aiken struck him in the beginning while

he was on the ground and he struck him again when he was in the automobile; and that he, the defendant, had no part in any scuffle or fight or striking.

The question for you to determine there again is what are the facts in respect of the evidence as you regard it.

In every criminal case, as you have been told in each one that you have heard, and it is the duty of the judge to tell you in each one, the trial starts with the presumption of innocence and the Government has the burden to establish guilt beyond a reasonable doubt. If you have no doubt as to guilt, of course you will find the defendant guilty. If you have no doubt as to his innocence, you will find him not guilty. If you have a doubt which arises in your mind and then you reason with it and talk it over among yourselves and then that doubt leaves you, then you would find the defendant guilty, because whatever doubt you had did not stand
167 the test of reason when you applied reason and when you discussed it with one another. But if you have a doubt arise in your mind and then after you talk it over and reason with it, that doubt stays with you and makes you hesitate in reaching a decision, under those circumstances it would be your duty to render a verdict of not guilty. That is the test that you apply to every criminal case. It is a test you apply to every element of every criminal case and, of course, it is the one that you apply in this case.

It was brought out, as has been suggested to you in the course of the trial, that this defendant previously had been convicted of the crime of robbery. That is not evidence of his guilt in the present case. The reason that is permitted is that under the law you would have a right to take into account that record of guilt in another case as affecting his credibility. You might say that in so much as he had been previously convicted of a crime you wouldn't believe what he said under oath in this case or you might say that even though he had been convicted of a crime you still believe what he is saying in this case, that you believe that he is worthy of belief and can be considered as telling the truth. You may consider that evidence as affecting his credibility in any way you see fit. The one thing

you should not do is to find him guilty in this case because he was previously convicted in another case.

168 When you come to decide the case, you, as I believe you have been told before, reach a conclusion as to the facts and as to the way in which you regard the evidence that you heard in the courtroom. The important thing for you to remember is that you are deciding facts. Sometimes we might be moved or might be inclined to be moved in making up our minds as to facts by prejudices on the one hand or by sympathy on the other. That has no part in a trial of a case. The jurors are supposed to reach a decision as to what are the facts. That is their job and it would not be fair for you to be prejudiced against this man simply because he is charged with the violation of narcotics laws which are serious laws on the one hand. It would not be fair on the other hand for you to decide against the Government or to take into account any sympathy that you might have by reason of his youth or by reason of any other consideration that might normally move you to sympathy. What are you to do is to decide the facts and, in making up your minds as to the facts, you follow the line of reasoning that you would follow if you had to make up your mind with regard to any important matter arising in your daily lives. Take into account the attitudes of the witnesses, the manner in which they testified, the bias they might have, or lack of bias, the reasonable inferences that you draw. That is the way you would do if you had to make

169 up your minds with regard to any important matter in your daily lives, and that is the way you would bring about a decision on the facts in this case; and if you apply that line of reasoning and having applied it have no reasonable doubt as to guilt, you will find the defendant guilty, dealing with each count separately, of course.

If, on the other hand, you have a reasonable doubt as to any one of the offenses or any element of the offenses, you would render a verdict of not guilty.

You may take the case, select a foreman, and try to agree on a unanimous verdict.

* * * *

a M. June 13.

BRIEF FOR APPELLEE 103

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

~~Contesta~~ Harvey v U S
193 F2d 928

No. 14,412

LAWRENCE OSBORNE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OLIVER GASCH,
United States Attorney.

CARL W. BELCHER,
ARTHUR J. McLAUGHLIN,
LOUIS M. KAPLAN,
Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit

FILED MAY 26 1958

Joseph W. Stewart
CLERK

No. 14,412

QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented:

1. Is the question of the legality of appellant's arrest reached where: (1) the validity of the arrest was not put into issue at trial; (2) there was no search or seizure after the arrest; (3) appellant throughout denied either ownership or possession of the evidence; (4) no transcript of the hearing on the pre-trial motion to suppress is contained in the record, and (5) no objection to admission of the evidence was made at trial? If so, was the arrest valid?

2. Is the admissibility of an alleged incriminatory statement made after arrest but before arraignment reviewable, where no objection was raised at trial and where there is no suggestion of coercion? If so, was not the statement properly received, having been volunteered shortly after arrest?

3. Is error disclosed in submitting the resisting arrest counts (Three and Four) to the jury, where the testimony was in conflict, and where a motion for judgment of acquittal was not made at the close of all the evidence?

4. Was the trial judge required to submit to the jury the question of probable cause for appellant's arrest, even though the legality of appellant's arrest was not put into issue and no request was made for such an instruction?

5. Are questions three and four above, involving Counts Three and Four, reached where the sentences imposed thereon were made to run concurrently with a 1952 sentence now being served?

6. If the record herein supports Counts One and Two (illegal possession of narcotics), is appellate consideration appropriate for the last two counts (resisting arrest), where the sentences are made to run concurrently with each other, and the sentence imposed on Count Two is longer than the sentences imposed on Counts Three and Four?

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QUESTIONS PRESENTED

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14412

LAWRENCE OSBORNE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Following the return of a four count indictment on October 15, 1956, appellant was tried in District Court before a jury and convicted for possession of narcotics, not in the original stamped package (Count One) and illegally imported (Count Two); assault on a federal officer performing official duties (Count Three); and assault on a police officer (Count Four) (J. A. 1, 2, 5). Sentence of imprisonment was imposed on May 3, 1957, as follows: twenty months to five years on Count One; ten years on Count Two; one to three years on Count Three; and one to three years on Count Four, the sentences to run concurrently with each other and concurrently with the sentence imposed in Criminal Case No. 766–52 (J. A. 5). (In Criminal Case No. 766–52 appellant had been given a two- to six-year suspended sentence for robbery and was placed on probation for five years. On May 3, 1957, probation was revoked and the two- to six-year sentence was ordered into effect.) His appeal is from the 1957 judgment of conviction (J. A. 6).

The pertinent facts are here summarized. Following an investigation by the Metropolitan Police Department an arrest warrant for one "Leroy," an alleged narcotics peddler, was sworn to and issued, charging violations of the Harrison Narcotics Act (J. A. 15, 22, 24, 53–54). Information was available that narcotics were being peddled in the vicinity of Delaware and "E" Streets, Southwest, and that on September 10, 1956, between 4:00 and 6:00 p. m., "'Leroy" would be selling narcotics in an alley in that area (J. A. 15, 53). On the morning of September 10, the police were given a detailed description of "Leroy" by an informant, one Buck Henderson, who described "Leroy" as five feet nine inches tall weighing 165 to 170 pounds, moustached, aged 29 to 32, and wearing a grey hat with a black band, the hat turned up in a certain way (J. A. 21–24). The informer was to be in the area for the purpose of signaling the police when "Leroy" arrived (J. A. 47). At about three o'clock on that day two police officers and two agents of the Federal Bureau of Narcotics went to the designated area for the purpose of executing the outstanding warrant for the arrest of "Leroy" (J. A. 15, 39, 53). Officer Aiken, with Agent Wilson in one car, and Officer Thomas, with the second agent in another car, drove to the designated alley in the middle of the 400 block of Delaware Avenue (J. A. 15, 18). Aiken and Wilson stationed themselves inside the Dy-Dee Wash building, from which they had a clear view of the alley, while Thomas and his partner took up surveillance at the other end of the alley (J. A. 18, 22, 26, 38–39).

Aiken and Wilson maintained continuous observation of the area from three o'clock on, Wilson leaving only momentarily to obtain a pair of field glasses from his car (J. A. 15, 20–21). Between four and six p. m. numerous known drug addicts, including appellant, assembled in the entrance to the alley (J. A. 15, 20, 25, 31, 40). At about 6: 05 Aiken and Wilson observed "Leroy" approach the area and enter the alley, the assembled loiterers following him (J. A. 15, 27, 47). The informant did not signal the police officer because, pursuant to prior arrangement, he had left the area at 6 o'clock because "Leroy" had not appeared by then (J. A. 47). Aiken and Wilson then circled around the block in their car and drove into the alley

from the east (J. A. 15). The people that had gathered in the alley were all clustered about "Leroy," and "Leroy" was seen passing unidentified objects to them and being handed something in return (J. A. 16, 40–42). Appellant was among those to whom "Leroy" was making "passes" (J. A. 42). As the car approached the alley someone shouted "here come the police" and everyone began to run (J. A. 16, 42). As agent Wilson got out of his car he saw appellant, backing into a doorway in the alley, slip something into his mouth. Wilson identified himself to appellant as a Treasury Agent, and told him he was under arrest. Appellant ran, and Wilson grabbed him by the back of his jacket. Appellant wheeled and struck Wilson on the left side of his head, knocking him down. As Wilson fell, he pulled appellant down and the two struggled. Officer Aiken, who was attempting to arrest another suspected addict, saw the struggle between Wilson and appellant, and rushed over to assist Wilson. While attempting to subdue him, Aiken saw appellant spit a bag from his mouth, and immediately picked it up off the ground. During the struggle appellant struck Wilson about the body. It took between five and ten minutes to subdue appellant, who himself was struck a number of times as a result of his violent resistance. Appellant finally agreed to get into the car, but then began fighting again, causing additional force to be used to quiet him. Both officers testified they had no guns or made use of any weapon in attempting to arrest appellant (J. A. 16–17, 31–38, 42–47). The bag spit from appellant's mouth and picked up off the ground by Aiken contained six capsules of what later proved to be a mixture containing heroin hydrochloride (J. A. 55).

Appellant was immediately taken to Police Headquarters after his arrest, and at about 6:20 or 6:30 Officer Thomas questioned him, and asked him where he had gotten the six capsules. According to Thomas's testimony, appellant said that he had gotten them from a man he knew only as "Skip" (J. A. 51–53). No objection was made to the receipt of this testimony. Appellant, however, denied making the statement (J. A. 67).

Appellant, who admitted a prior conviction for robbery, presented a different version of his arrest than that given by

the arresting officers. He admitted being in the alley but claimed he was looking for his stepfather to return two dollars he had borrowed. He testified that all of a sudden a group of people in front of him began to run, and agent Wilson then struck and knocked him down. He denied ever possessing any capsules or assaulting or resisting either Aiken or Wilson. He claimed that he was badly beaten and was refused medical treatment. (J. A. 65–77). Officer Thomas, who questioned appellant immediately after his arrest, stated that he observed no bruises or swelling, nor did appellant complain of any (J. A. 77).

Two female witnesses, one a long-time friend of appellant and the other a life-long neighbor of his, testified in appellant's behalf that they saw him being beaten, that he was not resisting, and that one of the officers had a gun (J. A. 57–65).

The record discloses that a pre-trial motion to suppress the six capsules of heroin was made and denied (J. A. 3–4). In that motion appellant alleged only that his arrest was illegal and that he never possessed narcotics at any time. No attempt was made during the trial to keep the capsules out of evidence, and at no time did appellant allege possession or custody of the contraband narcotics.

STATUTES INVOLVED

18 U. S. C., § 111 provides in pertinent part:

> *Assaulting, resisting, or impeding certain officers or employees.*—Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

§ 22–505 (D. C. Code, 1952 Edition, Supp. VI) provides in pertinent part:

> *Assault on member of police force.*—(a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in

the District of Columbia while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than five years or both.

SUMMARY OF ARGUMENT

I. Receipt of the capsules into evidence

No objection was made to the admission of the capsules at trial, although a pre-trial motion to suppress was made. However, the transcript of the hearing on the pre-trial motion is not contained in the record. Hence, since the record does not indicate to the contrary, the capsules were properly received into evidence. *Braverman* v. *United States,* 317 U. S. 49, 55 (1942). In any event, the point is without merit because appellant lacked standing to object, and because no search or seizure, as that term is defined, was ever made. *Accardo* v. *United States,* — U. S. App. D. C. —, 247 F. 2d 568 (1957); *Hester* v. *United States,* 265 U. S. 57, 58 (1924). Moreover, the evidence adduced at trial clearly shows that the arresting officers had probable cause to believe that appellant had committed a felony. *Bell* v. *United States,* C. A. D. C. No. 13,684, decided January 23, 1958. Therefore if a search was made, it was incidental to a valid arrest. *Ibid.*

II. Receipt of the alleged incriminatory statement

This Court will not entertain a *Mallory* argument where, as here, no objection is raised at trial, and there is no suggestion of coercion. *Gilliam* v. *United States,* C. A. D. C. No. 13,956 (decided April 24, 1958). In any event, the statement was not obtained improperly, having been volunteered shortly after arrival at the police station. *Perry* v. *United States,* — U. S. App. D. C. —, 253 F. 2d 337 (1957); *Trilling* v. *United States,* C. A. D. C. Nos. 13,069, 13,165, and 13,212 (decided April 17, 1958).

III. The convictions for resisting (Counts Three and Four)

Argument with respect to these counts is academic since the sentences imposed thereon were made to run concurrently with

a longer sentence now being served by appellant as a result of a 1952 conviction. Hence, allegations of error concerning these counts should not be considered. Moreover, if the record supports the possession counts (One and Two), the sentences imposed on these counts (Three and Four) are not reviewable since they run concurrently with the possession counts. *Hirabayashi* v. *United States*, 320 U. S. 81, 85 (1943); *Wanzer* v. *United States*, 93 U. S. App. D. C. 412, 208 F. 2d 45 (1953). In any event, there was sufficient evidence to submit these counts to the jury. Finally, appellant's argument that judgment of acquittal should have been granted as to these counts comes too late, no such motion having been made in the trial court at the close of all the evidence. *Battle* v. *United States*, 92 U. S. App. D. C. 220, 206 F. 2d 440 (1953).

Appellant's final contention, that the jury should have been instructed on "probable cause," is new and should not be considered. Rule 30, F. R. Crim. P. In any event, the legality of appellant's arrest was not put into issue at trial. It was appellant's contention that he did not resist arrest, and not that his resistance was justified. Choice of defense must be made at the trial level, and cannot be broadened on appeal.

ARGUMENT

I. Since no error is disclosed in the order denying the pre-trial motion to suppress evidence and since no objection to its admission was made at trial, receipt of the six capsules into evidence cannot constitute error

(a) The pre-trial motion

Appellant filed a pre-trial motion in the District Court, as permitted by Rule 41 (e) of the Criminal Rules, to suppress as evidence the six capsules of heroin (J. A. 3). The motion urged only that the arrest was illegal and that appellant never possessed narcotics at anytime. After a hearing the motion was denied by the District Court (J. A. 3–4). The record before this Court does not contain a transcript of the hearing before the lower court and therefore the order denying the motion to suppress is not reviewable and must be presumed correct. *Braverman* v. *United States*, 317 U. S. 49, 55 (1942); *Moses* v.

Hazen, 63 App. D. C. 104, 69 F. 2d 842 (1934). In any event, the motion on its face indicates that because neither possession or ownership of the capsules was claimed appellant lacked the necessary standing to move its suppression. *Accardo* v. *United States*, — U. S. App. D. C. —, 247 F. 2d 568, *cert. denied*, 355 U. S. 898 (1957) and cases there cited. Moreover, the evidence at trial supports the conclusion that in fact there was no search or seizure since the capsules had been abandoned by appellant when discovered on the street by a police officer. *Hester* v. *United States*, 265 U. S. 57, 58 (1924); *Lee* v. *United States*, 95 U. S. App. D. C. 156, 157–158, 221 F. 2d 29, 30 (1954). Appellant himself denied that the narcotics were taken from him.

(b) Receipt of the evidence at trial

Appellant did not object to the receipt of this evidence at trial. Therefore, if there be error, it must be found in the non-reviewable order denying the pre-trial motion to suppress. In any event, had objection to this evidence been made at trial, the court would have ruled adversely to appellant, who lacked standing to object.

Even if it be assumed (1) that appellant did have standing, and (2) that appellant had not abandoned the contraband narcotics, the arrest and subsequent "search" were clearly valid. It is undisputed that a police officer may arrest without a warrant if he has probable cause to believe that a felony has been or is being committed. Because appellant did not renew his objection at trial the Government was under no burden to show that the arrest was valid, or that the recovery of the narcotics was proper, since such questions were not put into issue. However, the evidence that was presented does show, beyond any doubt, that the arrest was valid.

(c) The arrest and "search"

The record indicates that the officers had more than probable cause to believe that appellant had committed a felony. The uncontradicted evidence discloses that following an investigation a warrant was secured for the arrest of a narcotics trafficker named "Leroy," the police having been informed that "Leroy" would be practicing his trade in a certain area

at a designated time. Having gone to the area to execute the warrant the police observed the gathering of numerous known drug addicts, including appellant, who apparently were waiting for the arrival of "Leroy." The testimony further shows that after his arrival numerous "passes" were made between "Leroy" and the assembled addicts, including appellant. As the police approached the group began to flee and appellant was seen putting something in his mouth. While attempting to escape appellant was placed under arrest, and in his struggle to evade capture, was seen spitting from his mouth what appeared to be capsules which were picked up off the ground.

In *Mills* v. *United States*, 90 U. S. App. D. C. 365, 366, 196 F. 2d 600, 601, *cert. denied*, 344 U. S. 826 (1952), the controlling test was said to be: "Were the facts and circumstances within the arresting officers' knowledge and of which they had reasonable trustworthy information sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed?" In this case the arresting officers, experienced in dealing with narcotic offenders, based their decision on observations buttressed by information previously supplied them. Cf. *Gilliam* v. *United States*, 189 F. 2d 321, 323 (6th Cir. 1951).[1] This Court has held valid an arrest based solely on information obtained from a reliable informant. *Wrightson* v. *United States*, 98 U. S. App. D. C. 377, 236 F. 2d 672 (1956). We have much more than that here. And finally, "the apparent attempt to escape under the circumstances here shown was seemingly an attempt to avoid the consequences of a crime being committed and enough to give the officers reasonable cause to arrest the appellant." *Levine* v. *United States*, 138 F. 2d 627, 629 (2d Cir. 1943); citing *Husty* v. *United States*, 282 U. S. 694 (1931). The recent decision of *Bell* v. *United States*, C. A. D. C. No. 13684 (decided January 23, 1958), and the cases there cited, require the conclusion that appellant's arrest cannot be contested seriously. See also *Brinegar* v. *United States*, 338 U. S. 160, 173–176 (1949); *Carroll* v. *United States*, 267 U. S. 132 (1925).

[1] The Court here said: "The question is whether the combination of what the officers saw with the reliable information they had received is probable cause to justify the search."

Assuming the recovery of the six capsules of heroin is regarded as a search, it was incidental to a valid arrest and therefore proper. If the Court agrees that the arrest is valid, the search obviously was authorized. Appellant does not suggest to the contrary.

In any event, the record permits no other conclusion but that a search was never conducted. Appellant himself steadfastly denied possession of narcotics at any time. And, if the Government's evidence is accepted, the narcotics were found after they had been abandoned in the public streets. Neither alternative suggests a search or seizure within the meaning of the Fourth Amendment. *Hester* v. *United States, supra; Lee* v. *United States, supra.*

II. The receipt into evidence of an oral statement made by appellant while under arrest discloses no error; the statement was voluntarily made shortly after arrest and was unobjected to at trial

This Court has recently held on a number of occasions that where no objection is raised at trial, and where there is no suggestion of coercion, a *Mallory* argument will not be entertained. *Gilliam* v. *United States,* C. A. D. C. No. 13, 956 (decided April 24, 1958) and cases there cited. In the instant case no objection whatsoever was made to the admissibility of the alleged incriminatory statement. Nor is there present in the record any suggestion of coercion. Accordingly, appellant is barred from raising this point on appeal.[2]

In any event, the statement was not obtained improperly, having been volunteered soon after arrival at the police station. Appellant's arrest took place shortly after 6:00 p. m. (J. A. 22), and, although the record is not absolutely clear, the statement apparently was made at around 6:20 or 6:30 (J. A. 51–53).[3] That he was not arraigned until the next day is of no

[2] The evidence at issue is Officer Thomas's testimony that appellant told him that he had gotten the narcotics from "Skip" (J. A. 51).

[3] Where no *Mallory* objection is made at trial the Government is not under a duty to introduce evidence bearing on such issue. Absent a *Mallory* question, evidence thereon would be irrelevant and therefore inadmissible. Accordingly, any ambiguity in the record should be resolved in the Government's favor.

significance. *United States* v. *Mitchell*, 322 U. S. 65 (1944); *Perry* v. *United States*, — U. S. App. D. C. —, 253 F. 2d 337 (1957); see also *Trilling* v. *United States*, C. A. D. C. Nos. 13069, 13165 and 13212 (decided April 17, 1958). The *Perry* case is directly in point and should control.

III. No error is disclosed in submitting the issue of assault to the jury

Appellant's fifth argument is that the convictions on Counts Three and Four should be reversed because appellant did no more than use reasonable force to resist an unlawful arrest. Appellant's contention apparently is that the trial judge should have directed verdicts of acquittal on these counts. The argument must fail, for any of a number of reasons.

1. The sentences imposed on Counts Three and Four are one to three years, to run concurrently (1) with each other, (2) with the aggregate ten-year sentence imposed on the first two counts, and (3) with the two- to six-year sentence imposed and suspended in 1952 but ordered into effect in 1957. No appeal has been taken from the 1952 judgment and the sentence imposed therein, now being served, is greater than the sentences imposed on Counts Three and Four. Accordingly, review of Counts Three and Four would be academic and should therefore be dispensed with. Moreover, if the record supports the sentence imposed on Counts One and Two (or on Count Two alone) the validity of Counts Three and Four should not be passed on. *Hirabayashi* v. *United States*, 320 U. S. 81, 85 (1943); *Wanzer* v. *United States*, 93 U. S. App. D. C. 412, 208 F. 2d 45 (1953). And finally, since the sentences imposed on Counts Three and Four run concurrently with each other, affirmance of either Count would moot review of the other. *Ibid.*

2. In effect appellant asserts that the evidence was insufficient to sustain a verdict of guilty on these two counts, and therefore the trial judge should have directed a verdict of acquittal. It is well settled, however, that the right to appellate review of the sufficiency of the evidence is lost if a motion for judgment of acquittal is not renewed at the close

of all the evidence. *Battle* v. *United States*, 92 U. S. App. D. C. 220, 206 F. 2d 440 (1953). Appellant did move for judgment of acquittal at the close of the Government's case (J. A. 56), but the motion was never renewed. In the *Battle* case, *supra*, the Court indicated that "manifest error or serious prejudice" might nonetheless require reversal, pursuant to Rule 52 (b) of the Federal Rules of Criminal Procedure. Appellant does not contend that such error exists, nor would the record support such a contention. In determining whether a verdict of not guilty should have been directed, the truth of the Government's evidence must be assumed, and the Government must be given the benefit of all legitimate inferences to be drawn from the evidence. *Curley* v. *United States*, 81 U. S. App. D. C. 389, 392, 160 F. 2d 229, 232, *cert. denied*, 331 U. S. 837, *rehearing denied*, 331 U. S. 869 (1947).

Count Three charges appellant with forcibly resisting and interfering with the performance of an official duty by Fred E. Wilson, a federal officer (18 U. S. C. § 111). Wilson testified that he identified himself to appellant as a federal officer, informed him that he was under arrest, and attempted to arrest him, at which point appellant struck Wilson on the left side of the head (J. A. 43). Wilson further stated that appellant continued to resist arrest and struck him several times in the head and in the chest region (J. A. 43, 44, 49), as a result of which he suffered a headache for several days (J. A. 50). Officer Aiken corroborated Wilson's testimony (J. A. 16, 17). Appellant testified he struck no blows and offered no resistance. As the trial judge informed the jury "There is a sharp conflict in testimony" (J. A. 82). The conflict, however, was for the jury to resolve, and its decision should not be disturbed on appeal since there obviously was ample evidence to support the jury's conclusion that appellant resisted and interfered with Wilson's attempt to arrest him.

Count Four differs with Count Three in that it involves a District of Columbia Police Officer (Aiken) and therefore a District of Columbia statute (22 D. C. C. — 505 (a), 1951 Ed., Supp. VI). Ample support for the jury's verdict is found in the testimony of Officer Aiken, that "When I tried to

pick up the capsules from the ground the defendant hit me on the back of my neck and knocked me to the ground" (J. A. 16). In addition, Aiken testified that he again was struck after appellant had gotten into the car (J. A. 17).

3. Appellant now contends that the few blows he was alleged to have struck can constitute no more than the use of reasonable force to resist an unlawful arrest. This contention cannot be considered, since it was never made below. Appellant did not request the trial court to instruct the jury that one may use reasonable force to resist an unlawful arrest. (Nor did he contend, at trial, that the arrest was unlawful.) Such an instruction would have been contrary to appellant's theory of defense, for he testified positively that he at no time assaulted either officer or resisted arrest in any fashion. The evidence presented by him and on his behalf suggested only that he was beaten by the police, and that no blows were returned or resistance offered.

Appellant's final contention, that the trial court should have instructed on "probable cause," is new and should not be considered. Rule 30 of the Criminal Rules provides in material part: ". . . No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict . . .". See also *Coates* v. *United States*, 87 U. S. App. D. C. 330, 186 F. 2d 338 (1950); *Wyche* v. *United States*, 90 U. S. App. D. C. 67, 193 F. 2d 703, *cert. denied*, 342 U. S. 943 (1952). As previously stated, the legality of the arrest was not put into issue at trial. Appellant did not object to the admissibility of the capsules of heroin, which in any event were not obtained as a result of a search or seizure, as that term has been defined. Nor was it appellant's contention at trial that he was resisting an unlawful arrest. In attempting to establish a defense to a criminal charge, a defendant may have a number of alternative theories to choose from. He may choose one or the other, and in some instances he may choose inconsistent theories, or he may present no defense at all. However, his choice must be made at trial. A new defense may not be interjected at the appellate level.

CONCLUSION

Wherefore, it is respectfully requested that the judgment of the lower court be affirmed.

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